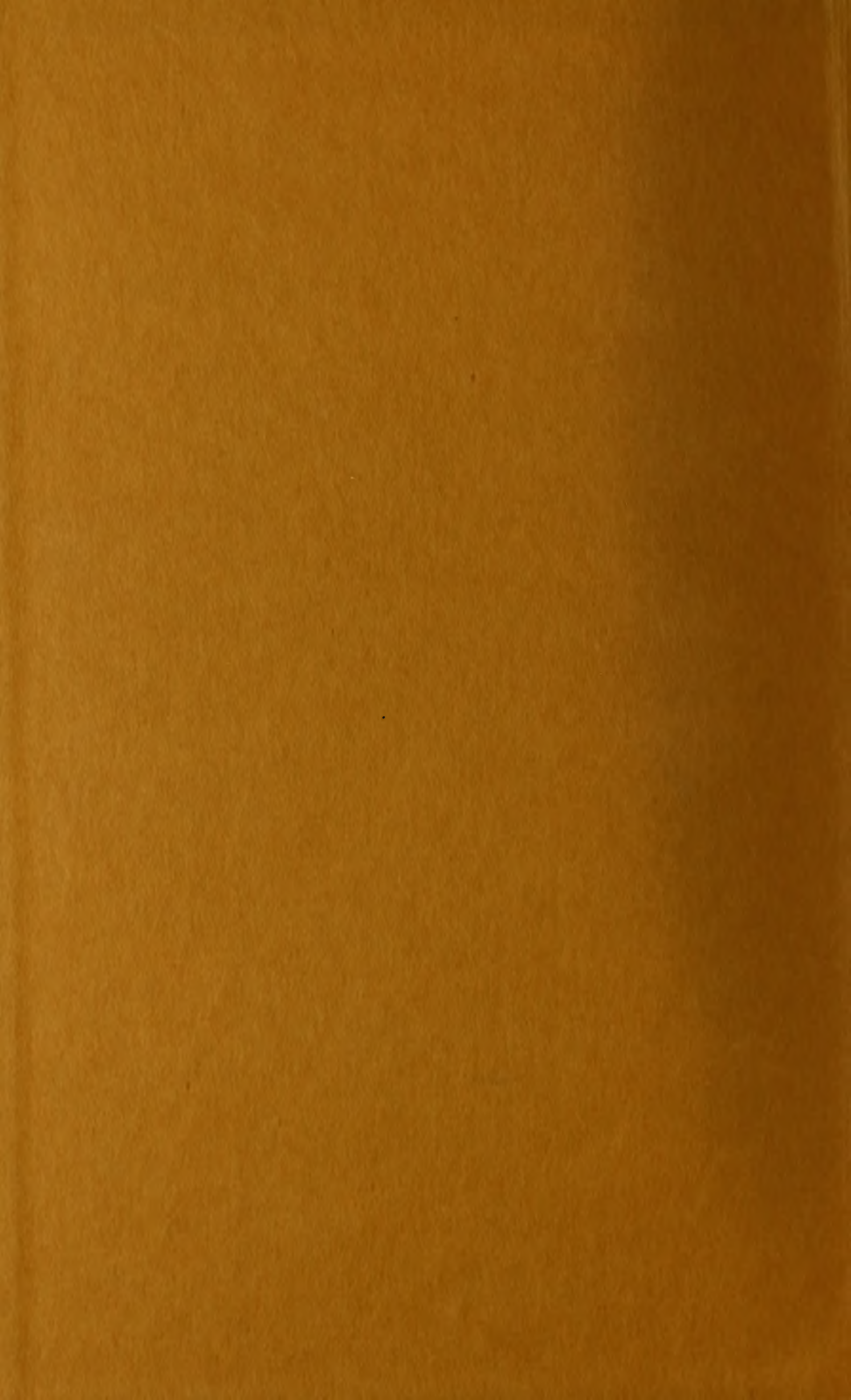
Palestine and Israel

A Challenge to Justice

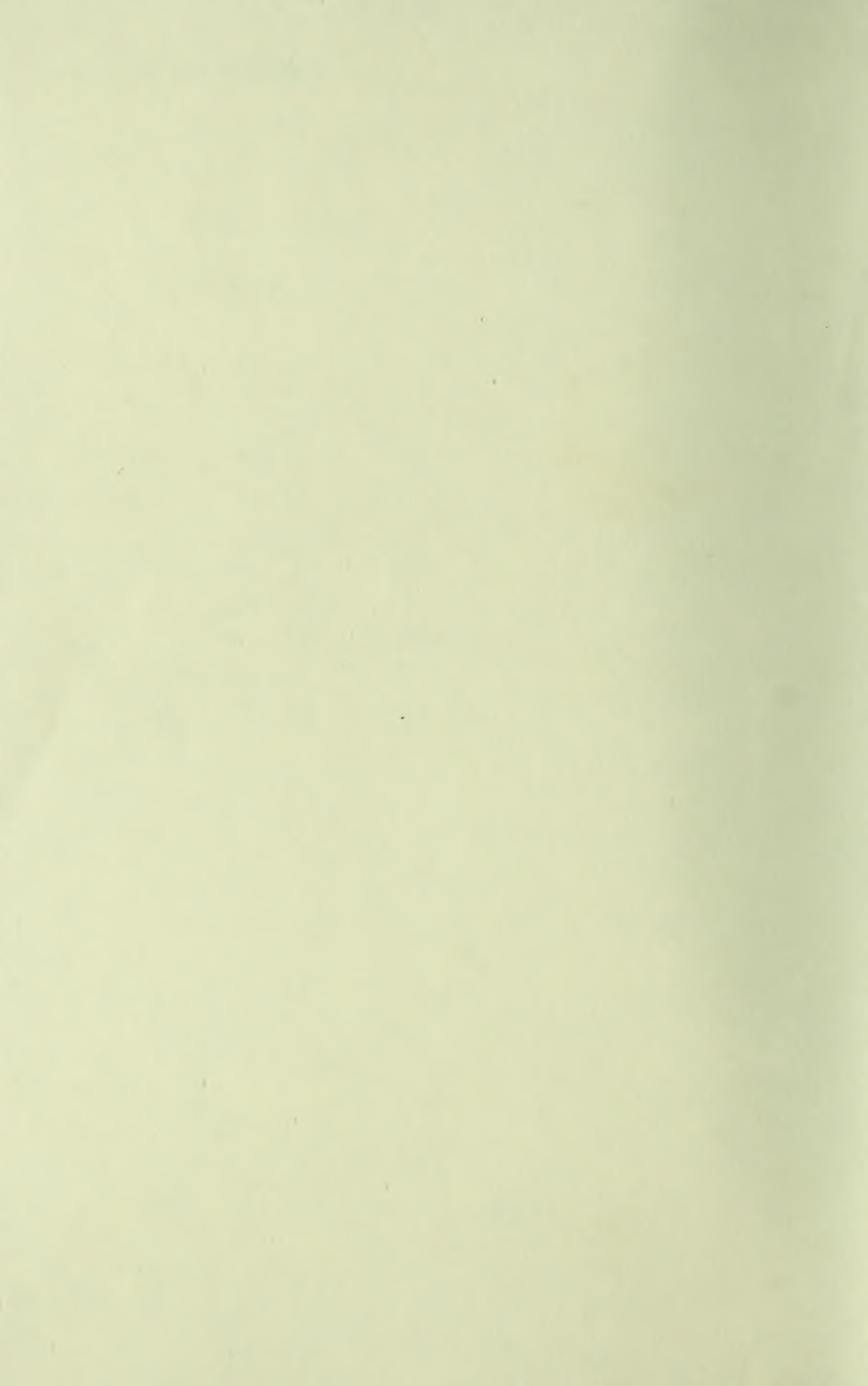
John Quigley







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A Challenge to Justice

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Duke University Press

Durham and London

1990

Printed in the United States of America on
acid-free paper ∞
Library of Congress Cataloging-in-
Publication Data appear on the last
printed page of this book.

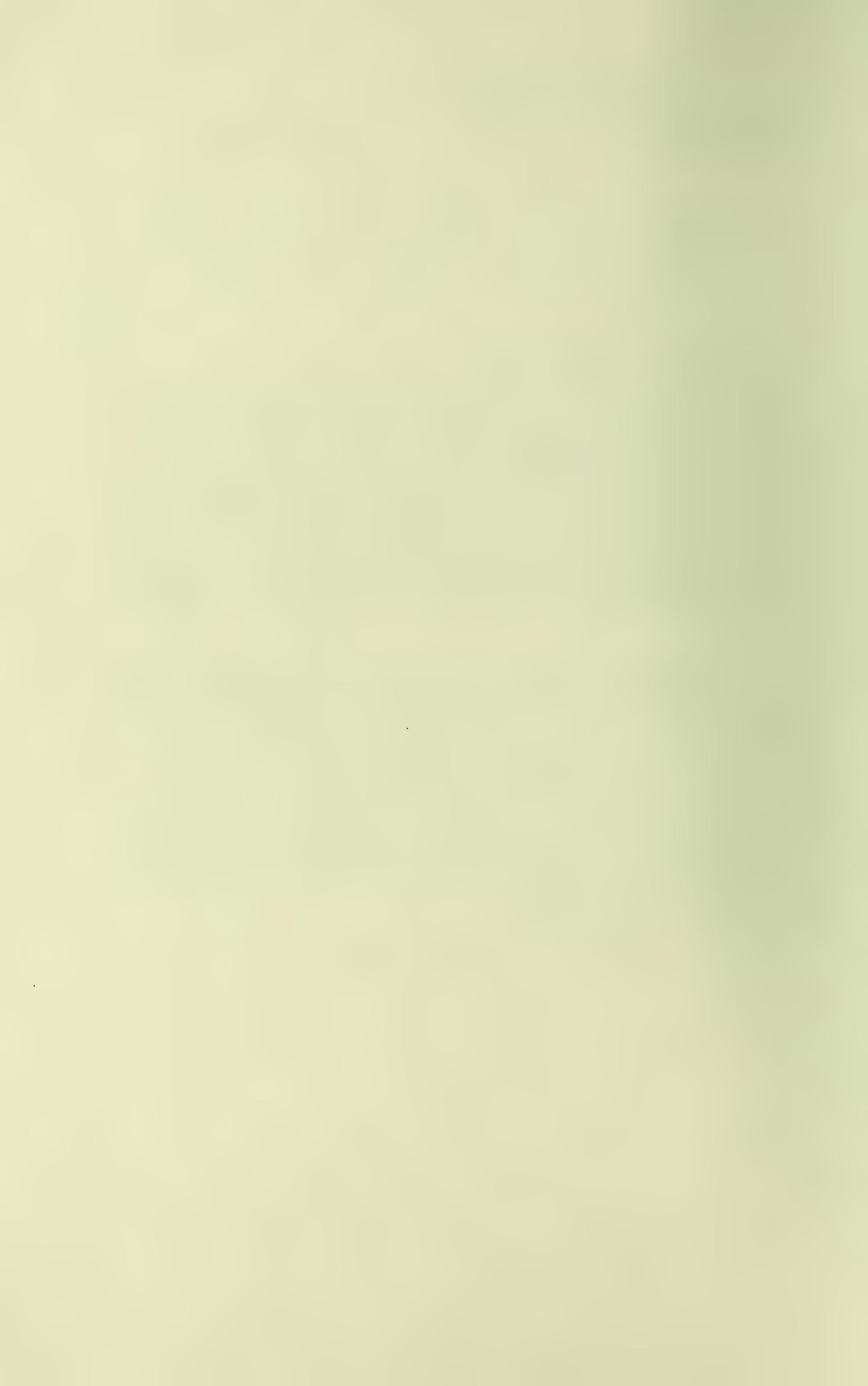
To my parents
John and Ruth Quigley

Contents

Acknowledgments

I am indebted to many persons for intellectual stimulation and factual information that were critical to the writing of this book. A number of Palestinian and Israeli lawyers and political analysts have provided encouragement and source material. My colleagues at the College of Law, Ohio State University, engaged me in productive dialogue. Law students in my international law seminars provided me with new perspectives on points I thought I had solved. The College of Law provided research support and invaluable assistance with computing. Its Law Library staff located publications in libraries around the world.

I profited greatly from the reading of an early draft by Professor Isaak Dore of St. Louis University, Professor Nasila Rembe of the National University of Lesotho, attorney Abdeen Jabara, Rabbi Elmer Berger, Ernest G. Nassar, attorney (and my wife) S. Adele Shank, and my mother Ruth Quigley. Duke University Press's readers saved me from factual errors and pointed me in important new directions. I thank Duke University Press Editor Reynolds Smith for his steadfast support and encouragement, and his help in transforming my original manuscript into a book.



Preface

Territorial disputes between states or peoples are often difficult to resolve. The dispute over Palestine between the Palestine Arabs and the Zionist movement is one of the most intractable, and in it the international community has played a major role. Beyond that, other nations have suffered a spillover of violence from it, both as full-scale war and as acts of violence against individuals. Indeed, the world community has had to live with the possibility that hostilities generated by this conflict could lead to a war between the superpowers.

Much of the thinking about the conflict has been oriented toward proposals that both sides can accept. That effort has been fruitful. However, solutions are not likely to be effective in the long term unless they take into account the legitimate interests at stake. In any negotiating context parties begin with their claimed rights, whether it is a negotiation between an employer and a trade union or two neighboring countries disputing their border. This is the element that has not been sufficiently prominent in the search for an end to the conflict between the Palestine Arabs and the Zionist movement. Before solutions can be devised, due consideration must be given to the rights involved. While this book does make some proposals for a settlement, proposing solutions is not my primary focus. Rather, I concentrate on the conflicting claims to the territory of historic Palestine, and my hope is that a proper assessment of those claims will provide a basis for seeking an enduring settlement.



Part One

Origins of the Zionist-Arab Conflict in Palestine



1

Zionist Settlement in Palestine:

The British Connection

. . . to a good and broad land, a land flowing with milk and honey.—*Holy Bible,* Exodus 3:8

A movement formed in the late nineteenth century among Jews in Europe to establish a Jewish state in Palestine, a land that during the first millenium B.C. had been the site of a Hebrew kingdom. The movement took its name—Zionism—from Mount Zion in Jerusalem, and its purpose was to escape discrimination in Europe. Mass killings of Jews had erupted from time to time going back to the eleventh century during the time of the Crusades when Jews had been forcibly converted to Christianity. In the fourteenth century Jews were held responsible for the Black Death, and large numbers were executed. Jews were frequently expelled from their places of residence, and in many places they were forced to reside in designated sectors.

The French Revolution improved the situation of Jews in Western Europe, but not in Eastern Europe. Most Eastern European Jews lived in Russia or Poland, which was ruled by Russia at the time, and in Russia Jews were by law restricted to residence in a so-called pale, as well as limited in the professions they could pursue. After several decades in which these restrictions were relaxed, in 1881 reactionary Alexander III became tsar and the situation of Jews worsened. Alexander III excluded Jews from the legal profession and from the right to vote in local government assemblies. He reduced the area of the pale and forbade Jews to settle in rural areas, even within the pale. By law he forbade Jews to take Christian given names.[1] Ultimately, serious mob attacks against Jews (pogroms) occurred in Russia and Poland in the late nineteenth century and, as a result of Alexander III's policies, Jews left Russia in large numbers. Most went to the United States, but some went to Palestine.

In 1897 Zionism emerged as a European-wide political movement with the first World Zionist Congress held in Basle, Switzerland, where Theodor Herzl, an editor of the influential Viennese paper, *Neue Freie Presse*, had emerged as a leader. Herzl's 1896 pamphlet *Der Judenstaat* (The State of the Jews) had called for a Jewish state in Palestine, and its publication in Vienna made a great impact. Not surprisingly, Zionism had its strongest following in Russia, but even there it was only one of several nationalist currents in Jewry.[2] Despite the difficult circumstances of life, most Jews remained in Eastern Europe and of those leaving most still preferred the United States.[3]

In Palestine, an Arab-populated country under the Ottoman (Turkish) Empire, Zionist immigrants set up agricultural settlements on purchased land. "From the very beginning," wrote Ariel Hecht, an Israeli analyst of land tenure in Palestine, "it was clear to the leaders of the Zionist movement that the acquisition of land was a sine qua non towards the realisation of their dream."[4] Land was not acquired in a random fashion. The effort, wrote Israeli General Yigal Allon, was "to establish a chain of villages on one continuous area of Jewish land."[5] The Arabs, soon realizing that the immigrant's aim was to establish a Jewish state, began to oppose Zionism.[6] As early as 1891 Zionist leader, Ahad Ha'am, wrote that the Arabs "understand very well what we are doing and what we are aiming at."[7]

In 1901 the World Zionist Organization formed a company, the Keren Kayemeth (Jewish National Fund), to buy land for Jewish settlers.[8] According to its charter, the Fund would buy land in "Palestine, Syria, and other parts of Turkey in Asia and the Peninsula of Sinai."[9] The aim of the Fund was "to redeem the land of Palestine as the inalienable possession of the Jewish people."[10] Fund director, Abraham Granovsky, called "land redemption" the "most vital operation in establishing Jewish Palestine."[11]

The Fund's land could not be sold to anyone and could be leased only to a Jew, an "unincorporated body of Jews," or a Jewish company that promoted Jewish settlement. A lessee was forbidden to sublease.[12] Herzl considered land acquisition under a tenure system that kept it in Jewish hands as the key to establishing Zionism in Palestine. "Let the owners of immovable property believe that they are cheating us," he wrote, "selling us things for more than they are worth. But we are

not going to sell them anything back."[13] The Fund thus kept land as a kind of trustee for a future state.[14]

The Fund purchased large tracts owned by absentee landowners. Most of this land was tilled by farmers whose families had held it for generations with possessory rights recognized by customary law. Regrettably for many of these families, in the late nineteenth century Turkey had instituted a land registration system that led to wealthy absentees gaining legal title to land, often by questionable means. After this occurred, the family farmers continued in possession—as tenants—and considered themselves to retain their customary right to the land, although that was no longer legally the case.[15]

At the turn of the century the better farmland in Palestine was being cultivated. In 1882 a British traveler, Laurence Oliphant, reported that the Plain of Esdraelon in northern Palestine, an area in which the Fund purchased land, was "a huge green lake of waving wheat."[16] This meant that the Fund could not acquire land without displacing Arab farmers. A delegate to a 1905 Zionist congress, Yitzhak Epstein, warned: "Can it be that the dispossessed will keep silent and calmly accept what is being done to them? Will they not ultimately arise to regain, with physical force, that which they were deprived of through the power of gold? Will they not seek justice from the strangers that placed themselves over their land?"[17]

An element of the Zionist concept of "land redemption" was that the land should be worked by Jews. This meant that Arabs should not be hired as farm laborers. While this policy was not uniformly implemented, it gained adherence. In 1913 Ha'am objected to it. "I can't put up with the idea that our brethren are morally capable of behaving in such a way to men of another people . . . if it is so now, what will be our relation to the others if in truth we shall achieve power?"[18]

But Herzl viewed the taking of land and expulsion of Arabs as complementary aspects of Zionism. It would be necessary, he thought, to get the Arabs out of Palestine. "We shall try to spirit the penniless population across the border by procuring employment for it in the transit countries, while denying it any employment in our own country. . . . Both the process of expropriation and the removal of the poor must be carried out discreetly and circumspectly."[19] Some Zionist leaders advocated moving Palestine Arabs to neighboring coun-

tries by force if necessary.[20] Moshe Menuhin, a student at the Herzlia Gymnasium in Palestine during the early twentieth century, recalled years later that "it was drummed into our young hearts that the fatherland must become ours, 'goyim rein' (free of Gentiles)."[21]

In 1909 the World Zionist Organization formed the Palestine Land Development Company, Ltd., which became the main purchasing agency for the Fund.[22] As land purchases increased, so did Arab opposition to them and, consequently, to Zionism itself.[23] At various locations in northern Palestine Arab farmers refused to move from land the Fund purchased from absentee owners, and Turkish authorities, at the Fund's request, evicted them.[24] Arabs formed societies in Jerusalem and Nablus to raise funds to purchase land that might otherwise be sold to Zionists, and Arab newspapers warned of the danger that Zionism posed to Palestine.[25] In Haifa Arabs formed a society in 1910 to lobby Turkey to prohibit land sales to Zionists,[26] and Arabs boycotted goods produced by the settlers.[27] In 1914 Arabs in Tiberias protested when settlers tried to buy the Huleh marshes, which contained mineral deposits.[28] At times dispossessed Arab farmers raided settlements built on their former lands and Zionist settlers formed a militia that it called Hashomer to defend them.[29]

The indigenous Jews of Palestine also reacted negatively to Zionism. They did not see the need for a Jewish state in Palestine and did not want to exacerbate relations with the Arabs. In 1903 a Zionist group in Palestine tried to convene a "Jewish National Assembly," but they got little response from the indigenous Jewish communities, which were in Jerusalem, Safad, Tiberias, and Hebron.[30]

Zionism emerged just as European nations were dividing Africa.[31] Taking advantage of the European interest in colonization, Herzl sought the backing of European governments in establishing a Jewish state. To European leaders he argued that Zionism would serve their interests in the Middle East.[32] "For Europe," Herzl said, "we could constitute part of the wall of defense against Asia; we would serve as an outpost of civilization against barbarism."[33] Yet Palestine was only one of several possible sites discussed for settlement. In 1903, at Herzl's request, Britain offered Uganda as a Jewish state.[34] The 1903 Zionist congress voted to send a commission there but let the matter drop.[35] In 1904 Herzl approached King Victor Emmanuel III of Italy and asked for Tripoli (north Africa) as a Jewish state. The

king refused.[36] To the sultan of the Ottoman Empire, Abdülhamid II, Herzl argued that Jews would help prevent an Arab uprising against the empire.[37]

Herzl approached Britain because, he said, it was "the first to recognize the need for colonial expansion." According to him, "the idea of Zionism, which is a colonial idea, should be easily and quickly understood in England."[38] In 1902 Herzl approached Cecil Rhodes, who had recently colonized the territory of the Shona people as Rhodesia. "You are being invited to help make history," he said in a letter to Rhodes. "It doesn't involve Africa, but a piece of Asia Minor; not Englishmen, but Jews. How, then, do I happen to turn to you since this is an out-of-the-way matter for you? How indeed? Because it is something colonial."[39]

Britain had already shown interest in Palestine. In 1839 Lord Palmerston as foreign secretary had opened a consulate in Jerusalem, instructing it to protect the Jews. Then in 1840 Palmerston proposed to the Ottoman Empire that it encourage settlement of European Jews in Palestine and that Jews be permitted to make complaints against Ottoman officials through the British embassy in Constantinople.[40] While nothing came of this plan, the British consul at Jerusalem carried out Palmerston's directive to assist Jews.[41] When anti-Jewish violence erupted in Damascus in 1840, Britain extended protection to Jews in Palestine.[42]

In encouraging the Jews to look to Britain for aid, Palmerston was following a technique already being used by rival powers. Cultivating a population group was a technique of European intervention in the Middle East in the nineteenth century. France already had client populations in the Levant, and Russia courted the Orthodox population.[43] A protected minority, it was hoped, would be loyal to the protecting power,[44] so Palmerston encouraged Jewish dependence on Britain.[45] This policy, however, was not risk-free. Conflict on protection of minorities precipitated the Crimean War of 1854–56.[46]

The Zionist movement hoped to build on this earlier British interest and on its contemporary needs in the Middle East. After Herzl's death in 1904 Chaim Weizmann assumed the lead.[47] A research chemist, Weizmann did military research for Britain during World War I and gained a position in the British admiralty through Lord Balfour, who was then foreign secretary.[48] Like Herzl, Weizmann argued that spon-

sorship of Zionism could help Britain. "Should Palestine fall within the British sphere of influence," he wrote to the *Manchester Guardian* in 1914, "and should Britain encourage a Jewish settlement there, as a British dependency, we could have in twenty to thirty years a million Jews out there, perhaps more; they would develop the country, bring back civilization to it and form a very effective guard for the Suez Canal."[49]

As Britain was taking territory from the Ottoman Empire in World War I, Weizmann increased his efforts. In 1917 he convinced Balfour to propose to the cabinet a policy statement in support of Zionism.[50] At Balfour's request Weizmann and Lord Rothschild, who headed the Zionist Federation in Britain, drafted the statement. Balfour convinced the cabinet to approve the statement, which Balfour then issued as a letter to Rothschild. The letter said that Britain "viewed with favor the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country."[51] The letter became known as the Balfour Declaration. The next month Britain captured Jerusalem.

The cabinet issued the declaration because it thought that Zionism would help Britain.[52] It hoped that Jewish settlement of Palestine under British auspices would strengthen Britain there.[53] Louis Brandeis, the president of the Zionist Federation of America, said that from his contact with British officials during World War I he became convinced that it was "as much to the interest of Great Britain as to our interest" that "Palestine should be developed by Jews."[54] Sir Ronald Storrs, Britain's military governor of Jerusalem and later of Palestine, said that Zionism "blessed him that gave as well as him that took by forming for England 'a little loyal Jewish Ulster' in a sea of potentially hostile Arabism."[55]

Moreover, the War had demonstrated the importance of oil, and Britain wanted to build a pipeline from Arabian oil fields west to Haifa.[56] Britain's Palestine expert, Sir Mark Sykes, saw in Zionism a vehicle for extending British influence in the Middle East.[57] In 1916 Sykes negotiated with France the secret Sykes-Picot Agreement, which arranged the postwar partition of the Ottoman Empire. The agreement gave Britain the right to build a port at Haifa[58] and called

for joint Anglo-French control of Palestine.[59] The cabinet feared competition from France and thought that a Jewish presence in Palestine under British protection would help it solidify control.[60] It also thought that Jewish settlement in Palestine would give Britain a solid base to counterbalance France's control of Lebanon and Syria.[61]

Prime Minister David Lloyd George viewed a Jewish "garrison-colony" in Palestine as a buffer for Egypt and the Suez Canal,[62] a view Weizmann encouraged by offering a Jewish Palestine as "an essential link in the chain of the British Empire." He said that Britain needed, "somewhere in the countries abutting on to the Suez Canal, a base on which, in case of trouble, she can rely to keep clear the road of Imperial communication."[63] A foothold in Palestine would provide protection for Britain's vital Cape-to-Cairo and Cairo-to-India routes.[64]

Britain also had interests relating to the prosecution of World War I, which had not yet ended. It needed to combat pacifism in Russia—Britain's ally—because the Bolshevik party was threatening a separate peace with Germany. The cabinet hoped that, since the Bolshevik Party counted many Jews as members and was anti-Zionist, British support for Zionism would draw Russian Jews away from Bolshevism.[65]

Finally, Britain had a problem gaining the sympathy of neutral-state Jews for its war effort because of Russian anti-Jewish policies.[66] Weizmann said that Britain, in issuing the Balfour Declaration, sought "to win the sympathy of world Jewry, especially of the American Jews."[67] Lloyd George said later that the Zionist leaders had promised, in return for the declaration, to "do their best to rally Jewish sentiment and support throughout the world to the Allied cause." He was satisfied that they had kept their word.[68]

After the decline of colonialism Britain's sponsorship of Zionism would engender dispute over its character. Zionism had been used, said some, as a cover for British imperialism.[69] The political scientist Hannah Arendt, a refugee from Nazi Germany who worked in Jewish relief organizations, found Zionism a movement that originally was idealistic. But she said that "by taking advantage of imperialistic interests," Zionism had "sold out at the very first moment to the powers-that-be." In a reference to Palestine's Arabs, she said that Zionism had "felt no solidarity with other oppressed peoples."[70]

In response, it was argued that British sponsorship did not color Zionism. "Since when," asked the Zionist legal scholar, Nathan Feinberg, "does a humanitarian project cease to be humanitarian and become reprehensible simply because those who support it are likely to derive some political benefit?"[71]

The Balfour Declaration referred to a Jewish "national home" in Palestine. The Zionist aim was to establish a state, as set forth in Herzl's *Der Judenstaat*. "National home" had been used instead of "state" by the first World Zionist Congress, because, with Jews only a small minority in Palestine, political reality dictated a formulation in less forthright terms. The congress conceived "national home" as a step toward statehood.[72]

Britain understood that the World Zionist Organization sought statehood, however, and did not object. Weizmann said that British officials assured him that "national home" meant "a Jewish State."[73] Representing the World Zionist Organization at the Versailles Conference in 1919, Weizmann declared that "when the Jews formed the large majority, they would be ripe to establish such a Government as would answer to the state of the development of the country and to their ideals."[74] Indeed, in the British cabinet Lord Curzon opposed issuance of the Balfour Declaration because he understood the aim to be statehood. He stated, "Here is a country with 58,000 Arabs and 30,000 or is it 60,000 Jews (by no means all Zionists). . . . Acting upon the noble principles of self-determination and ending with a splendid appeal to the League of Nations," we "draw up a document" that is "an avowed constitution for a Jewish state."[75]

The Balfour Declaration was also inexplicit on another point —the territory to which it applied. The declaration referred to a "national home" to be created "in" Palestine. This formulation suggested that it might encompass less than the entire territory of Palestine. But Brandeis told Balfour that, despite this formulation, the organization wanted a state encompassing all Palestine.[76] At Versailles it said that it wanted a state in all of Palestine, plus a strip of southern Lebanon and a strip east of the Jordan River.[77]

Balfour said that Zionism's critics invoked self-determination to argue that Palestine should belong to the majority of its existing population. He conceded that "there is a technical ingenuity in that plea" but argued that "the case of Jewry in all countries is absolutely

exceptional. . . . The deep, underlying principle of self-determination really points to a Zionist policy, however little in its strict technical interpretation it may seem to favour it."[78]

"In Palestine," Balfour said, "we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country." Balfour's rationale for disregarding Arab rights was that "Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires of prejudices of the 700,000 Arabs who now inhabit that ancient land."[79] British officials understood that Zionist colonization would take land and resources from Palestine's Arabs. According to Hugh O'Beirne, "All we can do" is to "devise a settlement which will involve as little hardship as possible to the Arab populations."[80]

At the urging of Brandeis, U.S. President Woodrow Wilson had responded to a September 1917 inquiry from Britain by saying that he favored Zionism.[81] Yet Wilson had made self-determination of peoples a major U.S. aim in World War I. Self-determination for peoples of the former Austro-Hungarian and Ottoman empires was seen at the 1919 Versailles Conference as necessary to a lasting peace.[82] A journalist at Versailles, Herbert Gibbons, noted the opposition of Palestine's Arabs to Zionism and asked: "How can we reconcile such a policy in Palestine with the principles for the *world-wide* maintenance of which we have announced that we are fighting?"[83]

Wilson's secretary of state, Robert Lansing, viewed Wilson's backing of self-determination as "fraught with danger." "Will not the Mohammedans of Syria and Palestine rely on it?" he worried. "How can it be harmonized with Zionism, to which the president is practically committed?"[84] In January 1919 a Palestinian Arab Congress was convened in Jerusalem to plan strategy to prevent the takeover of Palestine by the Zionist movement. Delegations represented the major towns of Palestine. Some delegates sought independence for Palestine with British guarantees against Zionist immigration, while others thought that uniting Palestine with Syria would provide better protection against Zionism.[85]

In 1919 Wilson dispatched a fact-finding commission to Palestine. Known as the King-Crane Commission, its report to Wilson confirmed Arab fears. It said that "the Zionists looked forward to a practically complete dispossession of the present non-Jewish inhabi-

tants of Palestine, by various forms of purchase." It recalled Wilson's position in World War I had been that one of the Allies' aims was that territorial settlements should be based on "the free acceptance" by "the people immediately concerned, and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery." The commissioners said that "if that principle is to rule, and so the wishes of Palestine's population are to be decisive as to what is to be done with Palestine," then "the non-Jewish population of Palestine—nearly nine-tenths of the whole—are emphatically against the entire Zionist program."[86]

To respond to this criticism, Weizmann minimized the danger to the Palestine Arabs. He told the Versailles Conference that the "Zionists wished to settle Jews in the empty spaces of Palestine."[87] But elsewhere Weizmann said that Palestine should become "as Jewish as England is English, or America is American."[88]

British and U.S. officials in Palestine foresaw difficulty. The King-Crane Commission telegrammed President Wilson: "We doubt if any British Government or American official here believes that it is possible to carry out Zionist program except through support of large army."[89] Anstruther MacKay, who served as Britain's military governor in Palestine during World War I, said that without military intervention from outside "the scheme of a Jewish state, or settlement, is bound to end in failure and disaster."[90]

A Jewish "national home," it was feared by Arabs and by many Jews, would lead to an ethnically based state. "How could a Jewish Palestine allow complete religious freedom, freedom of intermarriage, and free non-Jewish immigration, without soon losing its very reason for existence?" asked Morris Cohen, an American civil libertarian and an anti-Zionist. "A national Jewish Palestine," he feared, "must necessarily mean a state founded on a peculiar race, a tribal religion, and a mystic belief in a peculiar soil. . . . Zionists are quite willing to ignore the rights of the vast majority of the non-Jewish population of Palestine."[91]

At the time of World War I Zionism still enjoyed little support among Jews. At the Versailles Conference Weizmann claimed to speak for the 96 percent of European Jews who lived in Eastern Europe.[92] "A million Jews," he said, "staff in hand were waiting the signal to move" to Palestine.[93] But in 1927 Weizmann acknowledged that "the

Balfour Declaration of 1917 was built on air . . . I trembled lest the British Government would call me and ask: 'Tell us, what is this Zionist Organisation? Where are they, your Zionists?' . . . The Jews, they know, were against us; we stood alone on a little island, a tiny group of Jews with a foreign past."[94] In the United States few Jews were Zionists.[95] The World Zionist Organization delegation to the Versailles Conference claimed to represent the Jewish population of Palestine,[96] but indigenous Jews there still outnumbered Zionist settlers and opposed Zionism.[97]

2

Zionist-Arab Conflict Under the British Mandate: The Struggle for Land

Palestine belongs to the Arabs in the same sense that England belongs to the British and France to the French.—Mahatma Gandhi*

In an attempt to prevent wars like the one just ended the Versailles Conference created an international organization of nations, called the League of Nations. One source of international tension was the status of the colonies that Germany and Turkey had held. The peoples of many of those colonies, especially Turkey's colonies, were demanding independence. Yet the Versailles Conference did not opt for independence. Instead, in Article 22 of the covenant it adopted for the League of Nations in 1919, it characterized the peoples of the former German and Ottoman colonies as "not yet able to stand by themselves under the strenuous conditions of the modern world." It said that the states administering them should promote "the well-being and development of such peoples," bearing "a sacred trust of civilization." Administering states, which it referred to as mandatory powers, were to be accountable to the League of Nations.

An assembly of delegates elected that year from Syria, Palestine, and Lebanon, called the General Syrian Congress, denounced Article 22. The delegates said that Article 22 "relegates us to the standing of insufficiently developed races requiring the tutelage of a mandatory power." Fearing that Britain would try to implement the Balfour Declaration, they also rejected "the claims of the Zionists for the establishment of a Jewish commonwealth."

Though Article 22 denied independence to the people of Palestine and other dependent territories, it did recognize them as having an international status. In 1931 the Institute of International Law, a leading academic group, said that a mandate community was a subject of international law, meaning that it had the capacity

to bear rights and responsibilities.[2] In 1947 the UN Special Committee on Palestine stated that the mandate system gave "international recognition" to self-determination.[3] By prohibiting the states that took territories from Germany and Turkey from holding them as colonies, the International Court of Justice would say in 1971 that the League rejected the legality of annexation.[4] The League of Nations' Permanent Mandates Commission, which oversaw mandate administration, said that mandatory powers had no right of sovereignty but that the people under the mandate held ultimate sovereignty.[5]

Administering states bore specific responsibilities[6] and the condition of tutelage was temporary.[7] The "ultimate objective," the International Court of Justice would later say, was "the self-determination and independence of the peoples concerned."[8] In determining the fate of the territory after the expiration of the mandate, the wishes of the population were to be the key factor.[9] The League divided the mandate territories into three classes, depending on its assessment of how close the territory was to readiness for independence. Class "A" mandates were the closest to independence, class "C" mandates the farthest from independence. The League made Turkey's former colonies, including Palestine, Class "A" mandates, which it defined as those whose "existence as independent nations can be provisionally recognized."[10]

An opinion rendered in 1920 in a dispute that the League of Nations was handling indicated that self-determination was considered a legal right. The dispute related to the Aaland Islands, which lie between Finland and Sweden. The inhabitants of the Aaland Islands were Swedish. In 1809 Sweden ceded the islands, along with Finland, to Russia. When Finland became independent of Russia in 1917 the islanders asked Finland to return the islands to Sweden. A committee of jurists appointed by the League to give an opinion on the matter said that self-determination did not apply to a people located in a state that, like Finland, is "definitively constituted." The jurists thus concluded that the islanders had no right to separate from Finland. But the jurists said that in a situation of unresolved sovereignty self-determination would apply. They stated that if "territorial sovereignty" is lacking, then "the principle of self-determination may be called into play." Referring to "the principle of recognizing the rights of peoples to determine their political fate," they said that a people in a situation of unresolved sovereignty had a

right to choose between "the formation of an independent State" and merger with an existing state.[11]

In 1922, at Britain's request, the League of Nations gave it a mandate to administer Palestine. The document formalizing the relationship was called the Mandate for Palestine, which was a treaty between the League and Britain. The mandate included the words of the Balfour Declaration, just as it was adopted by the British cabinet in 1917.[12] Objections were raised in Britain that to make the Balfour Declaration governing policy in Palestine would violate the self-determination right of the people of Palestine.[13] In the House of Lords a group of members moved that Britain reject the mandate because of the inclusion of the Balfour Declaration. They put their motion to a vote and it carried by 60 votes to 29.[14]

But the British government ignored the Lords and accepted the mandate. The League thus gave its endorsement to the concept of a Jewish national home in Palestine.[15] The scope of that endorsement, however, remained unclear. The Balfour Declaration referred to the "historical connection" of the Jews to Palestine, and Weizmann construed this phrase to mean "that we have the right to establish our national home in Palestine."[16] But it is not clear that "right" was intended. The World Zionist Organization had asked the Versailles Conference to use the phrase "historical right" instead of "historical connection." The conference refused, precisely to avoid recognizing a right.[17]

The League asked the World Zionist Organization to set up an agency to oversee Jewish immigration and settlement. The mandate instrument said that "an appropriate Jewish Agency shall be recognized as a public body for the purpose of advising and cooperating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home."[18] As its first high commissioner in Palestine, Britain appointed Herbert Samuel, a proponent of Zionism. Weizmann expressed "the hope that Sir Herbert will continue to give his services to the Zionist cause for a long time to come."[19] Weizmann kept convincing Britain of Zionism's utility. He said that Britain had "an interest in Palestine" and a "double and tenfold interest in a Jewish Palestine."[20] He was concerned that some British political figures, like the members of the House of Lords, did not agree. "Maybe the British Empire does

need us, but so far not all the factors of British policy have sufficient knowledge of that fact. We try to make them comprehend it."[21]

Norman Bentwich, Britain's attorney general in Palestine, said that Britain as the mandatory power must advance the interests of the Palestine population. The "capitalistic exploitation which marked the development of Africa and the Far East under the protection of European States in the nineteenth century," he declared, was prohibited by the Mandate for Palestine.[22] He said that the mandate system meant the "right of nationalities, great and small, in the East as in the West, to live their national life, and the duty of the greater States to train them to that end."[23] But it was unclear how that would occur in Palestine if a Jewish national home were to be created there.

Backed by the Balfour Declaration, the Jewish National Fund stepped up its land purchasing.[24] In 1920 the World Zionist Organization founded the Palestine Foundation Fund (Keren Hayesod) to finance settlement of land purchased by the Jewish National Fund.[24] From the Hashomer militia, Zionist settlers formed what they called Haganah (self-defense force) to protect their land.[25] Brandeis said proudly that the Arabs "soon realized" that the force "was not to be trifled with."[26] A major function of the Haganah was to decide where the Fund should buy land and build settlements. "A special branch of the General Staff determined the location of each village," said General Allon, to ensure that they would be arrayed in a militarily defensible pattern.[27]

In 1920 the Histadrut, the General Confederation of Hebrew Workers in the Land of Israel, was founded as a nucleus for state-building, with David Ben-Gurion as secretary-general.[28] The Histadrut sought to create an economic infrastructure for a Jewish state and to promote Jewish settlement.[29] Its founding was later called "a central event in the process of the rebirth of the Hebrew people in the fatherland." While the Histadrut organized workers, it was—as explained by Pinhas Lavon, who later would be its secretary-general's secretary—"not a workers' trade union." The Histadrut also tried to organize Arab workers, to convince them not to oppose Zionism.[30] In 1921 Arabs rioted in Jaffa, their largest city, to protest Zionist land purchases. Recognizing the strength of this Arab reaction, Britain in 1922 clarified that the Balfour Declaration did not mean a Jewish

state, but rather a "national home," and that the "national home" would not encompass all of Palestine.

Some Zionists were concerned that in its quest to create a Jewish state the Zionist movement was running roughshod over the Arabs. "We think," wrote Ahad Ha'am in a letter to the editor of the newspaper *Ha'aretz* in 1922, "that the Arabs are all savages who live like animals and do not understand what is happening around. This is, however, a great error. . . . What do our brethren do in Palestine? . . . Serfs they were in the lands of the Diaspora and suddenly they find themselves in freedom, and this change has awakened in them an inclination to despotism. They treat the Arabs with hostility and cruelty, and even boast of these deeds; and nobody among us opposes this despicable and dangerous inclination."[31]

The Palestine Arabs saw themselves as subjects of the British Empire and feared becoming subjects of "a protegé—the Zionist movement—of this empire."[32] Quincy Wright, a leading international lawyer, reported after a 1925 visit that the Palestine Arabs regarded the Balfour Declaration as "a gross violation of the principle of self-determination proclaimed by the Allies."[33] Wright found that the Zionist settlers rationalized their takeover on what they argued was "the Jew's superior capacity to utilize the land and resources of Palestine. . . . As Englishmen occupied the lands of the American Indian through their superior ability to utilize them, so someone is going to occupy Palestine. If the Jews did not, the Italians would."[34] Wright found the Balfour Declaration and the mandate to be "political decisions" that were "difficult to reconcile with the claim of the Arab population to self-determination."[35]

During the 1920s the British government permitted the Jewish Agency to bring settlers into Palestine. The settlers needed land so the Jewish National Fund—as earlier—through its Palestine Land Development Company purchased land primarily from absentee owners.[36] Arab tenant farmers, however, often refused to vacate this land. Purchasers sued in the British courts, which stated that the farmers had no right to remain.[37] Nevertheless, the British government recognized the displacement as a problem, and in 1929 it enacted the Protection of Cultivators Ordinance, which required purchasers to compensate evicted tenant farmers.[38]

The settlement and land purchases, undertaken now with Brit-

ish backing, heightened the concern of the Palestine Arabs that their country might be taken from them. In 1929 conflict over access to the Holy Places in Jerusalem led to attacks by Palestine Arabs on Jewish settlements, resulting in the deaths of 133 Jews.[39] A British commission appointed to study the incidents (the Shaw Commission) found the cause of the discontent to be "the twofold fear of the Arabs that by Jewish immigration and land purchase they may be deprived of their livelihood and in time pass under the political domination of the Jews."[40]

The Jewish Agency denied that land purchases were displacing Arab tenant farmers.[41] It said, moreover, that the purchases were lawful and were made from willing sellers. "A Jew must be able to buy land from an Arab," according to Weizmann, "and must not be made responsible for what may or may not happen to the willing seller."[42] But the Fund was purchasing prime agricultural land.[43] To the Palestine Arabs the purchases represented a colonialist seizure of their land, even though the land was handed over by willing sellers.[44] They pointed out that in many other colonial situations land was acquired by purchase.[45]

The Shaw Commission found that the farmers' situation was "acute." It declared, "there is no alternative land to which persons evicted can remove."[46] It found "an acceleration of a process which results in the creation of a large discontented and landless class" and "no further land available which can be occupied by new immigrants without displacing the present population." The commission called for policy changes to avert "further calls upon the police to carry out evictions of large bodies of cultivators with no alternative land to which they can be moved or upon which they can settle."[47] It recommended limits on Zionist land purchases[48] and on immigration to Palestine.[49]

Britain's high commissioner for Palestine, John Chancellor, recommended total suspension of Jewish immigration and land purchase to protect Arab agriculture. He said, "all cultivable land was occupied; that no cultivable land now in possession of the indigenous population could be sold to Jews without creating a class of landless Arab cultivators." He recommended legislation "to insure that the indigenous agricultural population shall not be dispossessed of its land and to prevent the creation of a class of landless peasantry." The Colonial Office rejected the recommendation.[50]

A follow-up British government investigation later in 1930 (the Hope Simpson Commission) also found Arab landlessness as a result of Zionist land purchases. "Of 688 Arab families which cultivated in the villages of the Vale of Esdraelon which were purchased and occupied by Jews," said the commission, "only 379 are now cultivating the land."[51] "It is an error to imagine that the Government is in possession of large areas of vacant lands which could be made available for Jewish settlement. In fact free areas are negligible in extent."[52]

But Britain did not act on this finding. In a letter to Weizmann, dated February 13, 1931, Prime Minister Ramsey MacDonald said that Britain would not limit Jewish immigration or settlement and would not restrict land sales to Jews.[53] A new British inquiry in 1932, using a stricter definition of displacement, found Arab landlessness less significant than had the Shaw and Hope Simpson commissions.[54] But Arthur Ruppin, who headed land purchasing for the Fund, acknowledged that his land purchasing dispossessed Arab farmers. In 1930 he said, "What remains is densely populated land";[55] and in 1936: "On every site where we purchase land and where we settle people the present cultivators will inevitably be dispossessed." There is "no alternative, but that lives should be lost. It is our destiny to be in a state of continual warfare with the Arabs."[56]

As Zionist settlement progressed, Ben-Gurion acknowledged the rights of the Palestine Arabs that were in jeopardy. In a 1931 lecture in Berlin he said, "we are entirely for the right to self-determination of all peoples, of all individuals, of all groups, and it follows that the Arab in Palestine has the right to self-determination." He said that the Arabs' desire for self-determination "will create serious difficulties for us," but that "this is not a reason to deny their rights."[57]

In the early 1930s, as anti-Semitism grew in Germany, Britain allowed immigration at levels that doubled the Jewish population of Palestine between 1931 and 1935.[58] That influx increased the Jewish share of Palestine's population to 30 percent. With the population increase, Britain allowed substantial new land purchases.[59]

Some displaced Arab farmers took jobs as agricultural laborers in Zionist settlements, but the Histadrut, trying to create a Jewish society in Palestine, picketed Jewish employers who hired Arabs. In some cases it sent mobile units to work sites to evict Arab workers by force.[60] A picket organizer explained, "we stood guard at the orchards to prevent Arab workers from ever getting jobs there." The

Histadrut also encouraged Jews not to purchase Arab products. Boycott organizers poured kerosene on Arab tomatoes, attacked Jewish housewives in the markets and smashed the Arab eggs they bought.[61] As a result of this pressure, many Zionist settlers stopped hiring Arab farm workers.[62]

These tactics were later described by a British government inquiry as "a movement to intimidate those Jewish farmers who employ Arab labour." The picketing and pressure led the government to adopt the Prevention of Intimidation Ordinance of 1927.[63] The Arab Executive—an Arab political group—was one of the more prominent elements that protested the Jewish labor policy.[64]

But the Jewish Agency Constitution of 1929 required that only Jews be hired on Jewish National Fund land. Its policy stated, "the Agency shall promote agricultural colonization based on Jewish labour, and in all works and undertakings carried out or furthered by the Agency, it shall be a matter of principle that Jewish labour shall be employed."[65] The Fund drafted a model lease that stipulated: "The lessee undertakes to execute all works connected with the cultivation of the holding only with Jewish labour. . . . Where the lessee has contravened the provisions of this Article three times the Fund may apply the right of restitution of the holding, without paying any compensation whatever."[66]

Attorney General Bentwich called the Jewish labor policy "economic apartheid"and said that it strengthened Arab resistance to Zionist immigration.[67] In 1931 British historian Arnold Toynbee said that the land purchases and Jewish labor policy were creating "an exclusive preserve for the Jews, what in South Africa is called segregation."[68] The Hope Simpson Commission said that Fund land "ceases to be land from which the Arab can gain advantage either now or at any time in the future. Not only can he never hope to lease or to cultivate it, but, by the stringent provisions of the lease of the Jewish National Fund, he is deprived forever from employment on that land."[69] A British-U.S. inquiry found that the Jewish labor policy widened the economic difference between Jew and Arab by keeping Arabs from many jobs.[70]

The Hope Simpson Commission said that the Jewish labor policy violated Britain's obligation under Article 6 of the Mandate for Palestine to protect "the rights and position of other sections of the population." The commission said the "persistent and deliberate boycott of Arab labour in the Zionist colonies is not only contrary to the

provisions of that article of the Mandate," but "a constant and increasing source of danger to the country."[71]

There was a certain idealism, to be sure, behind the Jewish labor policy. It was viewed by some not as segregation but as a measure to avoid a society of European Jews exploiting Arab workers.[72] Advocates of the policy argued that it negated any colonial aspect in Zionism, since exploitation of local labor is a hallmark of colonialism. Others countered that colonists had not hired local labor in some colonial situations, such as in North America, the East Indies, Australia, and New Zealand.[73]

As its land purchases increased, the Jewish National Fund acquired tracts in close proximity to each other to create a geographic nucleus for a state.[74] In the 1930s it bought land in the Haifa area, along the Tel Aviv–Jerusalem road, in the Tel Aviv area, and in the Galilee.[75] The Jewish Agency established what it called "stockade and watchtower" settlements on purchased land.[76] These were fortified enclaves in areas where Jews had not lived previously, erected to facilitate the establishment of a state.[77]

Land acquired by the Jewish National Fund could serve as a base for a state because it could not be alienated. In this respect the Fund continued the policy it established before World War I. The 1929 Jewish Agency constitution stipulated that land acquired by the Fund "shall be held as the inalienable property of the Jewish people."[78] The Fund retained ownership and leased to Jews only.[79] By a 1933 amendment to its Memorandum of Association, subleasing was authorized,[80] but its model lease prohibited a lessee from subleasing "to a person or a company to whom the Fund according to its Memorandum of Association is prohibited from leasing its land."[81] The Memorandum of Association permitted leasing only to Jews, unincorporated bodies of Jews, and Jewish-owned companies.[82]

The Palestine Land Development Company tried to lease land east of the Jordan River from Emir Abdullah, the ruler under British mandate of Transjordan. In 1933 a deal was struck. Abdullah backed out of the deal, however, when the Arab press revealed it. Still, the company secretly paid Abdullah some of the agreed-upon rent moneys in what amounted to a political payment. Abdullah had shown himself willing to make an accommodation with Zionist ambitions, and the Jewish Agency cultivated the relationship.[83]

3

Things Fall Apart:

The Collapse of the British Mandate

All the King's horses, and all the King's men. . . .

The Jewish Agency became a state within a state in Mandate Palestine.[1] Besides being a landowner on a large scale, it financed agricultural settlement and held industrial and commercial enterprises. It was, said the Anglo-American Committee of Inquiry, which Britain and the United States sent to Palestine in 1946, "one of the most successful colonizing instruments in history."[2] Through its access to European wealth and technology and its influence in British political life, the Agency exercised more influence over British policy than did the Arabs.[3] Arab fear that the Agency might seek statehood culminated in 1936 in an Arab revolt against Britain. With a movement based largely in the rural population, the Arabs hoped to pressure Britain to stop Zionist migration and land purchases. Committees emerged in Arab towns to organize commercial strikes and campaigns for nonpayment of taxes.[4] Arab groups raided Zionist settlements, causing civilian deaths.[5] The Haganah, now attached to the Jewish Agency, raided Arab villages, also causing civilian deaths and demolishing houses.[6] In 1937 a new Zionist military group formed called the Irgun Zvei Leumi (National Military Organization), with the aim of using more overt force against the Arabs. For example, Irgun planted bombs in Arab markets.[7]

Britain gave itself extraordinary powers in 1937 to punish Arab rebels by enacting the Defense (Emergency) Regulations, which permitted incarceration without charge and expulsion from the country.[8] As it had done after the 1929 Arab protests, the British government appointed an inquiry commission, the Peel Commission, which issued its report in 1937, and—like the Hope Simpson Commission of 1931—it found land displacement to be the prime Arab concern.

The Peel Commission stated that the criteria for landlessness used in the 1932 land survey were "unduly restrictive," resulting in an understatement of the number of landless Arabs displaced by Zionist land purchases.[9] The commission also declared that Arabs continued to be displaced from land they cultivated[10] and that they could not find alternative land.[11] "The Arab peasant" had "neither the capital nor the education necessary for intensive cultivation. The Jew has. But the lack of these two essential requisites does not justify the expropriation of the Arab to make room for the richer and more enterprising colonist."[12] Arabs demanded a prohibition of land purchases by Zionist organizations, but the purchases continued.[13] A British official described a "filthy tin-can settlement where the evicted Arab peasants huddle under the orange trees."[14]

The Peel Commission also made an important political recommendation. It suggested the partition of Palestine into Arab and Jewish states, the Arab state to be placed under Emir Abdullah of Transjordan.[15] The Peel Commission envisaged the removal—by mutual agreement—of the Arabs who would fall within the envisaged Jewish state and of the Jews who would fall within the envisaged Arab state. According to the commission, there would be 225,000 Arabs in the Jewish state, but only 1,250 Jews in the Arab state.[16] The disparity in numbers indicated that the commission contemplated giving the Jewish state much Arab-populated territory, but not giving the Arab state any Jewish-populated territory.

The Arab Higher Committee, which had been formed in 1936 by several Arab political parties as a voice for Arab interests, called the partition proposal a violation of the Arabs' "basic natural rights" and of their self-determination.[17] The Jewish Agency applauded it but did not abandon its aim of taking all of Palestine. Ben-Gurion viewed a Jewish state in a part of Palestine as a stepping-stone, "a powerful instrument for the total fulfillment of Zionism, an instrument for the redemption of all the Land of Israel."[18] If the Arabs objected to the Agency's expansion beyond the area of partition, Ben-Gurion declared, "our army will be among the world's outstanding."[19] He told the Zionist Executive that "after the formation of a large army in the wake of the establishment of the state, we will abolish partition and expand to the whole of Palestine."[20]

By the "Land of Israel," Ben-Gurion meant Mandate Palestine plus Transjordan and portions of Syria and Lebanon.[21] He told the

World Zionist Congress in Zurich in July 1937: "The mandate in the motherland does not cover the totality of Greater Israel. Have we therefore renounced the right to settle the part of the land of Israel situated outside the zone of the mandate?"[22]

Some Zionist leaders advocated military means to statehood. Irgun leader Vladimir Jabotinsky asked, "Has it ever been known that a people would willingly give up its soil? No more would the Palestine Arabs yield their sovereignty without force."[23] Golda Meir, who headed the Histadrut's political department, said in 1937 that only through war could Zionism establish a state in Palestine.[24]

The Jewish Agency welcomed the Peel Commission's proposal of a population transfer. It began to plan for removal of the Arabs, establishing a Population Transfer Committee.[25] Weizmann urged Britain to buy out Palestine Arabs and relocate them in Transjordan to make more room for Zionist settlement.[26] Ben-Gurion was less optimistic about securing consent to a removal of so many Arabs. He proposed "transferring the Arab populations with their consent or without, and then to enlarge Jewish colonization."[27] "We must expel Arabs and take their places,"[28] but he saw no need to pay compensation.[29] Joseph Weitz, a Jewish National Fund official who directed Zionist settlement, wrote in 1940: "Among ourselves it must be clear that there is no place in the country for both peoples together. . . . With the Arabs we shall not achieve our aim of being an independent people in this little country." Weitz wanted "at least the western part [west of the Jordan River] of Eretz Israel without Arabs." He saw "no other way but to transfer the Arabs from here to the neighbouring countries; transfer all of them, not one village or tribe should remain."[30]

In a 1938 speech to the Workers Party of Eretz Israel (Mapai), of which he was a founder, Ben-Gurion acknowledged the Arab perception of Zionism that had led to the Arab revolt. "We are the aggressors, and they defend themselves." By this time Ben-Gurion was the chairman of the Jewish Agency, and he acknowledged that for the Arabs Palestine "is theirs, because they inhabit it, whereas we want to come here and settle down, and in their view we want to take away from them their country."[31]

Mahatma Gandhi also understood the Arab reaction to Zionism but drew conclusions different from Ben-Gurion's. In 1939 Gandhi, who was trying to secure Britain's withdrawal from India, said, "It is

wrong and inhuman to impose the Jews on the Arabs. What is going on in Palestine today cannot be justified by any moral code of conduct. The mandates have no sanction but that of the last war." In a reference to the Peel Commission's partition proposal he said, "It would be a crime against humanity to reduce the proud Arabs so that Palestine can be restored to the Jews, partly or wholly as their national home."[32]

Zionist military prospects were enhanced by the Arab revolt because Britain allowed Jews to arm themselves legally for the first time, and 20,000 Jews came to possess arms. The Haganah began to manufacture arms and to bring them clandestinely from Europe, storing them in secret locations.[33] At the same time Britain disarmed the Arab population to prevent another outbreak of violence. Sentiment for Zionism within European Jewry grew in the 1930s as a result of Nazi policy toward Jews, but most Jews still opposed it.[34] The Jewish Agency and World Zionist Organization tried to ensure that Jews emigrating from Europe would go to Palestine.

When Nazi anti-Jewish policy became apparent, Ben-Gurion anticipated the necessity for Jewish emigration from Germany. He saw an opportunity to get Jews to Palestine and a danger that they might be accepted elsewhere. "Britain is trying to separate the issue of the refugees from that of Palestine," he said, and "it is assisted by anti-Zionist Jews," by which he meant Jews who urged Western countries to accept Jewish refugees. "The dimensions of the refugee problem demand an immediate, territorial solution; if Palestine will not absorb them, another territory will. Zionism is endangered."[35]

In 1938 a thirty-one-nation conference was held in Evian, France, on resettlement of the victims of Nazism. The World Zionist Organization refused to participate, fearing that resettlement of Jews in other states would reduce the number available for Palestine.[36] The German Zionist organization, in its negotiations with Germany to secure emigration of Jews, maneuvered to get the Gestapo to force Jews emigrating from Germany to go to Palestine.[37] Ben-Gurion was also concerned, as he said in a letter to the Zionist Executive in 1938, that "if Jews will have to choose between the refugees, saving Jews from concentration camps, and assisting a national museum in Palestine, mercy will have the upper hand and the whole energy of the people will be channelled into saving Jews from various coun-

tries." In that situation Ben-Gurion feared "Zionism will be struck off the agenda not only in world public opinion, in Britain and the USA, but elsewhere in Jewish public opinion. If we allow a separation between the refugee problem and the Palestine problem, we are risking the existence of Zionism."[38]

In November 1938 the British government rejected the Peel Commission's recommendation to partition Palestine. The government explained that partition was "impracticable," by which it meant it could not be forced on the Palestine Arabs.[39] In May 1939 it issued a white paper as a new statement of policy. A single independent state should come into being in Palestine within ten years to be "governed in such a way as to ensure that the essential interests of each community are safeguarded." Immigration of Jews was to be limited to a total of 75,000 for the next five years, and thereafter there was to be no more immigration without the acquiescence of the Arab community. The government again recognized landlessness among Arabs as a critical problem and for the first time called for radical measures to curb it, saying that land sales in areas of extreme land shortage should be prohibited altogether, while in other sectors they should be regulated.[40]

The Jewish Agency took the new policy as an abandonment of Zionism and issued an angry rejection. The Agency said that "Jews would fight rather than submit to Arab rule."[41] The day it was issued the Irgun bombed the Palestine Broadcasting Service office in Jerusalem and attacked the Immigration Office.[42] Mass demonstrations were organized within the city.[43] The Jewish Agency began to organize a military wing to fight the British army,[44] and the Irgun undertook a series of bombings aimed at Arabs—in a movie house, in coffee houses, in public squares.[45] It set a time bomb at the vegetable market in Haifa, killing eighteen Arabs.[46]

Within three months World War II broke out, and the Jewish Agency and the Irgun suspended anti-British agitation, deciding instead to cooperate with Britain against Germany.[47] That shift displeased some Irgun members, who split from the Irgun to continue armed action against Britain. They called their organization Fighters for the Freedom of Israel, which became known by its Hebrew acronym, LEHI, or the Stern Gang, after its founder, Avraham Stern.[48]

Disillusioned with Britain because of the white paper, the Jew-

ish Agency began to look to the United States for support.[49] The Agency needed a new major power to back it and the United States was in any event replacing Britain in the Middle East.[50] Ben-Gurion said of that period: "I no longer doubted that the center of our political work in the international arena had shifted from Britain to the United States, which had firmly grasped world leadership and in which the largest and most influential Jewish concentration in the Diaspora was to be found."[51]

During World War II the Jewish National Fund continued to purchase land.[52] The Haganah, though cooperating with Britain, stole arms from British depots in the Middle East and stockpiled them in Palestine for use after the war.[53] Arab groups also stockpiled weapons.[54]

In May 1942 the American Emergency Committee for Zionist Affairs, meeting at the Biltmore Hotel in New York, declared that its aim was "that Palestine be established as a Jewish commonwealth."[55] This was the first open declaration of an aim to establish a state and to do so in all of Palestine.[56] In October 1944 the American Zionists at their Atlantic City convention called for a "free and democratic Jewish commonwealth" in "the whole of Palestine, undivided, and undiminished."[57] This formulation was adopted in August 1945 at a London meeting of the World Zionist Conference, the policymaking body of Zionism.[58] Meanwhile, LEHI kept up armed attacks to force Britain out of Palestine. In 1944 it tried unsuccessfully to assassinate High Commissioner Harold MacMichael in Jerusalem, but in Cairo it succeeded in assassinating Lord Moyne, the British resident minister in the Middle East.[59]

World War II left a legacy that would influence Palestine's future. As a result of the Nazi genocide, many Jews feared to remain in Central and Eastern Europe. In Poland violence against Jews continued even after the war ended. Arnold Toynbee thought that Britain and the United States should have admitted them since they had been persecuted by another Western country.[60] But no state was willing to accept them.[61]

The Jewish Agency was anxious to get the refugees to Palestine but it was not clear whether a substantial number of them wanted to go there. A U.S. government report found that of the refugees expressing a desire to go to Palestine in 1945, many decided to do so "because they realize[d] that their opportunity to be admitted into the United

States or into other countries in the Western Hemisphere [was] limited, if not impossible."[62]

The Jewish Agency did not encourage Western governments to accept these refugees. To the contrary, it lobbied to deny their admission.[63] Morris Ernst, an advisor to President Franklin Roosevelt, worked unsuccessfully to gain permission for the refugees to enter the United States. He found opposition from U.S. Zionist leaders who wanted to leave the displaced Jews no option other than Palestine. The leaders attacked Ernst "as if I were a traitor," he said. *New York Times* publisher Arthur Sulzberger shared Ernst's view. "Why in God's name should the fate of all these unhappy people be subordinated to the single cry of Statehood?" he asked. Sulzberger said that these "unfortunate Jews" were "helpless hostages for whom statehood has been made the only ransom."[64] Roosevelt reportedly took the decision to refuse admittance to Jewish refugees because of opposition from U.S. Zionist organizations.[65]

In October 1944 Egypt, Iraq, Saudi Arabia, Yemen, Transjordan, Syria, and Lebanon formed the League of Arab States at a meeting in Alexandria, Egypt.[66] In a resolution on Palestine the new organization deplored "the horror and suffering which the Jews of Europe have endured" but said that their situation should not be resolved by inflicting "another injustice at the expense of the Palestinian Arabs."[67] The Arab states found it unfair to "make the Arabs pay for Germany's crimes."[68]

Ben-Gurion visited the United States in 1945 and established a businessman's group that sent arms for the Haganah.[69] As the War ended, the Jewish Agency began a campaign to drive Britain out of Palestine.[70] The Haganah had instituted conscription in the early 1940s and, through thefts from British arms depots, it had increased its hidden stockpile of arms and ammunition.[71] The Irgun joined LEHI, with the secret encouragement of the Haganah.[72] The Haganah began military operations of its own, the three groups coordinating their attacks on bridges, railways, and British army personnel.[73] The most spectacular operation was the Irgun's dynamiting—with Haganah consent—of the British headquarters, located in the King David Hotel in Jerusalem, in July 1946.[74]

While fighting Britain, the Jewish Agency negotiated secretly for a territorial settlement with Abdullah, who in 1946 became king

when Britain gave Transjordan its independence.[75] The Agency also kept up the secret payments to Abdullah it had begun in 1933.[76] Abdullah, encouraged by the Peel Commission's suggestion of attaching part of Palestine to Transjordan, hoped to annex a portion of Palestine.[77] The Agency also established new settlements, particularly in the Negev, in preparation for the declaration of statehood. Jewish National Fund Director Granovsky said in October 1946 settlements founded within the past year had resulted in "penetrating boldly and energetically into new districts and decisively changing the map of Palestine."[78] Also in 1945 the Haganah undertook clandestine military maneuvers, which involved simulated assaults on Arab villages.[79]

A major point of tension between Britain and the Jewish Agency was the Agency's efforts to bring Jews into Palestine clandestinely, in violation of the limits set for immigration by Britain. An Agency underground apparatus organized ship transport to Palestine from Mediterranean ports, and the United States pressured Britain to admit more Jews.[80] But Britain took strict measures to stop the immigration and deported Jews who entered Palestine illegally.

To quell the Jewish Agency revolt, Britain used the Defense (Emergency) Regulations. In 1946 Dov Joseph, a future minister of justice of Israel, denounced them before the Jewish Lawyers Association. "There is no guarantee to prevent a citizen from being imprisoned for life without trial," he said. The government may "banish any citizen at any moment." A decision to banish, he complained, was taken administratively: "a man does not actually have to commit an offense; it is enough for a decision to be made in some office for his fate to be sealed." The regulations authorized "collective responsibility," he complained. "All of the six hundred thousand settlers could be hanged for a crime committed by one person."[81]

Yaacov Shapira, another future minister of justice in Israel, said the regulations led to a situation "unparalleled in any civilized country. Even in Nazi Germany there were no such laws." To call the military tribunals that conducted trials under the regulations "courts," he declared, was "mere euphemism."[82] Moshe Dunkelblum, a future judge of the Supreme Court of Israel, said the regulations "violate the basic principles of law, justice, and jurisprudence. They abolish the rights of the individual and grant unlimited power to the

administration.[83] The Jewish Lawyers Association demanded repeal of the regulations.[84]

In 1946 the United States and Britain sent the Anglo-American Committee of Inquiry to Palestine to make recommendations for future policy. The committee said that Palestine should be neither Jewish nor Arab but should have a single government. The constitution should protect Jewish rights, so the Jewish minority would not be under the control of the Arab majority, and a UN trusteeship was proposed to facilitate the transition to independence.[85]

The Jewish Agency cited its revolt as proof that Zionism was not a tool of Britain.[86] But other colonizing populations had revolted against the metropole. "The fact that the Jewish community in Palestine afterward fought the British," wrote American journalist I. F. Stone, "is no more evidence of its not being a colonial implantation than similar wars of British colonists against the mother country, from the American Revolution to Rhodesia.[87] Richard Crossman, a British member of the Anglo-American Committee of Inquiry, wrote that despite the revolt the Arabs viewed the "Zionist invasion" as "an act of national and economic oppression of a colonial people."[88]

The Zionist movement continued to press for Palestine as a Jewish state. In February 1947 Ben-Gurion told Britain's foreign minister Ernest Bevin that the Jewish Agency wanted "a Jewish state embracing the whole of western Palestine," meaning the area west of the Jordan River.[89] Desperate for a solution, Britain toyed with reviving partition, urging the Jewish Agency to table a partition proposal. But the Agency refused.[90] In April 1947 Britain announced that it would leave Palestine; it had tired of the Agency's revolt, particularly the recent attacks by the Irgun against British soldiers and officers. It was unable to find a formula to balance the competing Zionist and Arab interests, and so it asked the newly established United Nations to propose a solution.[91]

4

A Portrait by Picasso:

The UN Recommendation of Partition

All the nations assemble as one,
The peoples gather.
—*Holy Bible*, Isaiah 43:9

When Britain asked the United Nations to make recommendations on the status of Palestine, five Arab states asked the UN General Assembly to take up the Palestine issue as a matter of "the termination of the Mandate over Palestine and the declaration of its independence."[1] They were concerned that Britain's open-ended request for a recommendation on the future governance of Palestine invited the General Assembly to link the issue of Jewish refugees in Europe with that of Palestine's status. They feared that the question of legal entitlement would be forgotten. But the General Assembly rejected the Arab approach and took up Britain's request, appointing an eleven-nation Special Committee on Palestine.[2] The General Assembly gave the Special Committee a broad mandate, which the committee construed as permitting it to consider Jewish refugees in Europe in formulating a recommendation on Palestine.[3]

In its discussions the General Assembly relied on the Jewish Agency to speak for the Jews of Palestine.[4] By 1947 many more Jews supported Zionism than before World War II, both in Europe and in Palestine, but the U.S. delegate, Warren Austin, cautioned the General Assembly that the Jewish Agency did not speak for all Jews, or even for all Jews in Palestine.[5] The Arab Higher Committee—convinced that the Special Committee would not give due consideration to Arab rights—did not cooperate with it, even though Arab-state representatives testified before it.

The United States, pressed by the Jewish Agency to support the partition of Palestine, had yet to state a public position. Under Secre-

tary of State Dean Acheson said that partition held "domestic advantages for us," by which he meant securing the Jewish vote in the 1948 presidential election. But, even so, Acheson said that partition carried "too great a weight of international difficulty to put across."[6] Secretary of State George Marshall also saw a conflict between domestic and international considerations. He said that formulation of a U.S. position was "extremely complicated" because of "factors of internal politics."[7]

In September 1947 the Special Committee reported back to the General Assembly.[8] The committee acknowledged that the self-determination right of the Palestine Arabs had been violated by the inclusion of the Balfour Declaration in the League of Nations Mandate for Palestine Arabs. The committee further stated that the principle of self-determination, internationally recognized after World War I, was "adhered to with regard to other Arab territories" but was "not applied to Palestine, obviously because of the intention to make possible the creation of the Jewish National Home there." The "Jewish National Home" and the "*sui generis* Mandate for Palestine," it said, "run counter" to the principle of self-determination.[9]

The Special Committee did not question the validity of the League's approach, even though a self-determination right had just been written into Article 1 of the UN Charter. Three members of the Special Committee proposed a federal state with Jewish and Arab components, while a majority of seven members suggested the partition of Palestine into a Jewish state and an Arab state with an economic union between them. None favored a single state in Palestine, the preferred solution of the Arab Higher Committee.

The decision of the majority to propose partition reflected a linkage of the refugee and Palestine questions. Weizmann correctly stated that the United Nations "was motivated pre-eminently by the purpose of solving once and for all the Jewish question in Europe, to get rid of the concentration camps and of the aftermath of Hitler's holocaust."[10] But others viewed this as a convenient solution for a problem that should have been handled otherwise. Morris Ernst, Roosevelt's advisor, decried "the hypocrisy of closing our own doors while making sanctimonious demands on the Arabs."[11] Pakistan's UN delegate commented, sarcastically: "Australia, an overpopulated small country with congested areas, says no, no, no; Canada, equally congested and overpopulated, says no; the United States, a great humani-

tarian country, a small area, with small resources, says no . . . they state: let them go to Palestine, where there are vast areas, a large economy and no trouble; they can easily be taken in there."[12]

There was "neither merit nor justice," said Toynbee, in "compensating victims at the expense of innocent third parties."[13] The Palestine Arabs were "innocent of the crimes committed against the Jews by the Germans under the Nazi regime." Toynbee thought that if a state were to be created as compensation, it "should have been carved out of Central Europe." A "guilty Western people's territory was held to be sacrosanct, because, though guilty, they were Westerners. . . . An innocent non-Western people's territory could, it was held, legitimately be given away to the Jews by the victorious Western powers. This amounts to a declaration of the inequality of the Western and the non-Western sections of the human race. It is a claim that Westerners are privileged, however guilty they may be."[14] A U.S. diplomat found "no necessary connection between the humanitarian problem of succoring the displaced persons of Europe and the political problem of creating a new nationalist state in Palestine."[15]

The Jewish Agency welcomed the partition recommendation, while the Arab Higher Committee rejected it.[16] The Jewish Agency geared up its parastate institutions for an early assumption of power and began troop mobilization.[17] The Haganah was placed under the control of David Ben-Gurion, who was still chairman of the Jewish Agency.[18] The Palestine Arabs had no program of conscription or military training,[19] but the Arab League took a decision to resist, by force if necessary, any effort to implement partition in Palestine.[20] In October 1947 the League resolved to send troops only if the Jewish Agency invited foreign troops on its side,[21] and it decided to provide military aid to local militia of the Palestine Arabs.[22] Though militarily weak, Palestine's Arabs planned to resist the expected attempt by the Jewish Agency to take over Palestine.[23] Loy Henderson, the U.S. State Department official responsible for Middle Eastern affairs, advised Secretary of State George Marshall to approach the matter cautiously. He said that the partition plan ignored "self-determination and majority rule." The United States, Henderson said, was "under no obligations to the Jews to set up a Jewish State. The Balfour Declaration and the Mandate . . . provided not for a Jewish State, but for a Jewish national home."[24]

King Abdullah, who commanded the only Arab army of any size, continued his secret negotiations with the Jewish Agency over a division of Palestine.[25] On November 17, 1947, Abdullah met Golda Meir, who headed the Jewish Agency's political department, in a small town on the Jordan River. Abdullah said that Transjordan would not intervene militarily against a Jewish state, if one was established by the Agency.[26] He also asked the Agency to increase its financial subsidy to him.[27] In addition to a direct payment, the Agency was paying the expenses in New York of Omar Dajani, the man who represented Transjordan at the United Nations.[28]

After receiving the Special Committee's report, the General Assembly constituted an Ad Hoc Committee on the Palestine Question to frame the Palestine issue for plenary debate, composed of all UN member states.[29] The ad hoc committee set up a subcommittee 1 to draw up a detailed plan for partition and a subcommittee 2 to draw up a plan for a single Palestine state.[30] Subcommittee 2 asked the ad hoc committee to urge the General Assembly to seek an advisory opinion from the International Court of Justice before adopting any resolution on Palestine.[31] It wanted the Court to determine whether the Balfour Declaration violated self-determination of the Palestine population, whether the indigenous population of Palestine had a right to determine the status of Palestine, and whether the General Assembly had the power to suggest or to enforce a territorial settlement for Palestine.[32] A Jewish Agency lawyer, Shabtai Rosenne, thought the questions "one-sided."[33] The ad hoc committee narrowly defeated the request of the subcommittee 2 for an advisory opinion.[34] That led members of subcommittee 2 to castigate the majority for giving insufficient weight to the "juridical aspects of the Palestine question."[35]

Subcommittee 1 approved the Special Committee's partition plan, with some changes, and the ad hoc committee voted to recommend partition to the General Assembly. The resolution asked the Arab Higher Committee and the Jewish Agency to establish states with an economic union between them, including common rail transport, postal system, and currency. A two-year phase-in period was envisaged to establish this infrastructure. Jerusalem was to be included in neither state but to be administered under an international regime. The suggested boundary between the two states was long and intri-

cate—not intended as a defensible international border.[36] The proposed boundaries of the Jewish State—according to Robert McClintock, a U.S. State Department official—were "predicated on the assumption that there would also be an Arab State in Palestine linked to the Jewish State by economic union." He likened the partition map to "a portrait by Picasso."[37]

The proposed Jewish state would have had 56 percent of Palestine. Jews owned 6 percent of the land and made up 30 percent of the population, most of them mandate-period immigrants.[38] Ernest Bevin, Britain's foreign secretary, noted the difficulty of drawing boundaries because of the sparseness of Jewish population. "It is impossible to find in all Palestine, apart from Tel Aviv and its environs . . . any sizable area with a Jewish majority."[39] In the envisaged Jewish state Jews would have been in a minority—499,020 Jews to 509,780 Arabs.[40] In the proposed Arab state there would have been only 9,520 Jews to 749,101 Arabs.[41] The plan thus gave much Arab-populated territory to the Jewish state, but little Jewish-populated territory to the Arab state.

On November 25, 1947, the ad hoc committee approved the partition recommendation of subcommittee 1, by a vote of 25 to 13, with 17 abstentions. While sufficient to carry the plan in the subcommittee, this margin was short of the two-thirds majority that would be required for passage in the General Assembly. By this time the United States had emerged as the most aggressive proponent of partition. Most European countries, including the Soviet Union, supported it, but most Third World countries viewed it as an infringement of Arab rights.[42] The United States got the General Assembly to delay a vote "to gain time to bring certain Latin American republics into line with its own views."[43] U.S. officials, "by direct order of the White House," used "every form of pressure, direct and indirect," to "make sure that the necessary majority" would be gained, according to former Under Secretary of State Sumner Welles.[44] Members of the U.S. Congress threatened curtailment of economic aid to several Third World countries.[45]

As a last-minute compromise, and as a major concession, several Arab states proposed a plan for a federated government in Palestine. Similar to the Special Committee's minority proposal, this plan called for a federation with Jewish and Arab components.[46] Colom-

bia asked the General Assembly to refer the matter back to the ad hoc committee for further efforts at producing a solution acceptable to both the Arabs and the Jews of Palestine.[47] There was little reason in the fall of 1947 to believe that the delicate political arrangement contemplated by the partition plan could find the necessary level of cooperation between the Jewish and Arab communities.

But the General Assembly proceeded to a vote on the partition plan. On November 29 it adopted a draft resolution embodying the partition plan as Resolution 181. The resolution narrowly gained the required majority of two-thirds—33 in favor, 13 opposed, and 10 abstaining. Included in the countries that switched their votes from November 25 to November 29 to provide the two-thirds majority were Liberia, the Philippines, and Haiti. All heavily dependent on the United States financially, they had been lobbied to change their votes. Liberia's ambassador to the United Nations complained that the U.S. delegation threatened aid cuts to several countries.[48] Some delegates charged U.S. officials with "diplomatic intimidation."[49] Without "terrific pressure" from the United States on "governments which cannot afford to risk American reprisals," said an anonymous editorial writer, the resolution "would never have passed."[50] The fact such pressure had been exerted became public knowledge, to the extent a State Department policy group was concerned that "the prestige of the UN" would suffer because of "the notoriety and resentment attendant upon the activities of U.S. pressure groups, including members of Congress, who sought to impose U.S. views as to partition on foreign delegations."[51] Zionists packed the public gallery during the November 29 meeting to urge adoption of the partition plan.[52] Several delegates said the resolution "would have been carried in no other city than New York."[53]

Resolution 181 was a political solution, a Zionist lawyer, Benjamin Akzin, wrote at the time, "not a verdict of a court of law."[54] An Arab lawyer, Nabil Elaraby, chided the General Assembly for having acted without examining the question of legal claims to Palestine.[55] In subsequent self-determination disputes—over Namibia (South-West Africa) and Western Sahara—the General Assembly would seek advisory opinions from the International Court of Justice.[56] "The Arabs," declared an Arab jurist of Resolution 181, "have had to pay for and expiate the outrage committed against mankind in Treblinka,

Auschwitz, and elsewhere."[57] A Yugoslav jurist objected that Resolution 181 reflected the view that "so-called 'civilized' people were stilled entitled to determine the fate of the 'uncivilized,' and that the territories and interests of dependent nations were objects to be manipulated—in short the blindly obstinate arrogance which we call the 'colonial spirit'!"[58]

A U.S. military officer, Commander E. H. Hutchinson, who later chaired the Israel-Jordan Armistice Commission, said that in adopting Resolution 181 the major powers "overran the rights of the indigenous population of Palestine—the Arabs. Every step in the establishment of a Zionist state" was "a challenge to justice."[59]

The Jewish Agency accepted Resolution 181. The Jewish Agency proceeded with its plans to establish a Jewish state, although it did not promise to limit itself to the area proposed in Resolution 181.[60] On November 30 the Arab Higher Committee rejected Resolution 181.[61] It hoped that the General Assembly might reconsider the issue and recommend an alternate solution. The Arab League also still hoped for a political solution and made no preparations for intervention. Meeting in Cairo in December, the League kept to its October plan of aiding Palestinian irregulars rather than intervening directly.[62] The mufti of Jerusalem, Haj Amin al-Husseini, who headed the Arab Higher Committee, opposed Arab League military intervention. He feared correctly that King Abdullah of Transjordan wanted part of Palestine.[63] The Arab states feared each other's motives and territorial ambitions;[64] within the Arab League, Abdullah objected to the formation of an independent Palestinian state,[65] and Syria organized a force of irregulars under the command of Fawzi al-Kaukji for immediate intervention in Palestine, as a counterweight to Abdullah's plan of annexation.[66]

The Palestine Arabs were not well organized administratively or politically and had little military capability.[67] Disarmed by Britain after their 1936 revolt,[68] they had no full-time military force, no military unit structure, and no unified command.[69] The arms they had been able to accumulate in the 1940s were no match for those of the Haganah, which was "one of the largest and best-trained underground armies in modern history."[70] Richard Crossman said the Arabs knew that if Britain withdrew without a political solution, the Haganah would overrun the country.[71]

The day after Resolution 181 was adopted the Jewish Agency called on all Jews age seventeen to twenty-five to register for military service in the Haganah.[72] It began purchasing armaments in the United States,[73] and the Haganah operations chief prepared a map showing "the strategic characters of every Arab village."[74] The Arab Higher Committee made no military decisions but called on Palestine Arabs to hold a three-day commercial strike to protest the partition plan.[75]

5

Chaos on the Ground:

Palestine in a Power Vacuum

And the Lord said to Moses in the plains of Moab by the Jordan at Jericho, "Say to the people of Israel, When you pass over the Jordan into the land of Canaan, then you shall drive out all the inhabitants of the land from before you, . . . and you shall take possession of the land and settle in it, for I have given the land to you to possess it. . . . But if you do not drive out the inhabitants of the land from before you, then those of them whom you let remain shall be as pricks in your eyes and thorns in your sides, and they shall trouble you in the land where you dwell."—*Holy Bible*, Numbers 33:50–56

Outraged at the General Assembly's partition recommendation, Palestine Arabs held street demonstrations in Palestine during the three-day commercial strike.[1] Groups of Arabs attacked Jews and vice versa, resulting in deaths on both sides.[2] The Haganah restrained Jewish crowds[3] and the Arab Higher Committee counseled against violence by Arabs.[4] Demonstrations were also held in other Arab countries to protest Resolution 181.

The Arab Higher Committee planned no major military action before British withdrawal, now scheduled for May 1948.[5] But local Arab irregulars loyal to the Arab Higher Committee staged armed attacks on transport convoys that carried supplies to Zionist settlements and Jewish-populated towns. These attacks resulted in more deaths.[6] In mid-December the Irgun and LEHI, which were still attacking the British army, launched major attacks against Arabs.[7] Irgun and LEHI operatives threw bombs into Arab shops and street crowds.[8] "The Jews again appeared today to be on the offensive," the *New York Times* reported in a December 12 dispatch, "roughly two-thirds of the incidents being initiated by them, and in their operations they showed evidence of planning, something absent in general from the Arab attacks."[9] In its December 13 dispatch the *New York Times*

reported: "The day's total casualties were twenty-one Arabs and three Jews killed. . . . More than eighty Arabs were wounded and three Jews were seriously wounded."[10] Though the Jewish Agency disclaimed responsibility for Irgun and LEHI killings, British High Commissioner Alan Cunningham and the U.S. Central Intelligence Agency both reported that the Haganah, Irgun, and LEHI had coordinated strategy.[11]

The Irgun leader, Menachem Begin, took pride in this offensive. "For three days, from 11th to 13th December," he recounted, the Irgun "hammered at concentrations of rioters and their offensive bases," by which he meant Arab towns and villages. Begin continued, "we attacked at Haifa and Jaffa; at Tireh and Yazar. We attacked again and again in Jerusalem. . . . Enemy casualties in killed and wounded were heavy."[12] In its attack on Tireh village the Irgun killed thirteen people.[13] LEHI also targeted Arab civilians. In the words of a British officer, Major R. D. Wilson, LEHI made "bestial attacks on Arab villages, in which they showed not the slightest discrimination for women and children, whom they killed as opportunity offered."[14] "The hope for a decrease in tension, arising from Arab reaction to the United States decision on partition of Palestine, seemed destroyed by the Irgun Zvai Leumi terrorist bombings of Arabs yesterday," the *New York Times* reported in its December 14 dispatch.[15]

Ben-Gurion laid a plan to destroy Arab transport. He hoped to force the evacuation—"because of hunger"—of Haifa and Jaffa, two major Arab cities. We can "starve them out," he wrote on December 14.[16] As Britain turned over the policing of some Jewish-populated areas to a Jewish police force,[17] the Jewish Agency proceeded with its plans to establish a state, which it was thought might be named Judea.[18]

On December 18, 1947, the Palmach—the shock force of the Haganah—attacked the Arab village of Khissas, killing five adults and five children.[19] The Jewish Agency publicly commended the action.[20] Of that attack, Christopher Sykes, a contemporary observer, wrote "something of the evil spirit of the terrorists," meaning the Irgun and LEHI, "was entering Haganah." The Khissas attack was "in no sense the sudden deed of hotheads," but "part of a considered policy which had been preceded by debate, and was finally ordered by the highest authorities of the Jewish Agency and Haganah." He felt "this Haganah crime precipitated the next phase of the war."[21]

The next day the Haganah dynamited the house of the village

elder of Qazaza village in central Palestine, killing several inhabitants.[22] At that point the Jewish Agency and the Haganah formally announced a policy of reprisals against Arab civilians.[23] The Central Intelligence Agency called these Haganah attacks "terrorist raids against the Arabs similar in tactics to those of the Irgun Zvai Leumi and the Stern Gang [LEHI]."[24]

The Haganah justified its attacks on Arab civilians as reprisals for acts committed by inhabitants since Jewish civilians were being killed in attacks on convoys. A pattern quickly developed. "While the Jews are suffering mainly through sniping at their road convoys," reported *The Times* of London, "the Arabs have lost many lives through Jewish assaults on their villages."[25]

At a December 26 meeting of Haganah leaders, Ben-Gurion said a "major offensive against the Arabs" would "greatly reduce the percentage of Arabs in the population of the new state." His biographer commented that "this might be called racialism," but that "the whole Zionist movement actually was based on the principle of a purely Jewish community in Palestine." He quoted Ben-Gurion as saying the fewer Arabs in the new Jewish state, "the better he would like it."[26]

As Arab militia continued attacks on convoys, the Jewish Agency used armored buses to get supplies through safely.[27] The irregulars also attacked supply trains, and British troops began to ride the trains to thwart attacks.[28] The British army took food supplies to the Old City of Jerusalem into the Jewish Quarter, which the irregulars were trying to blockade.[29] In Haifa the Irgun threw bombs into a crowd of Arab workers at the gates of the Haifa oil refinery, killing several of them. Arab workers who were not injured by the bombs immediately assaulted Jewish workers at the refinery, killing a number of them.[30] The Haganah attacked the nearby village of Balad ash Sheikh and killed inhabitants in reprisal.[31]

In January 1948 Syria-based irregulars called the Arab Liberation Army, under Fawzi al-Kaukji, entered Palestine and attacked Zionist settlements. They were counterattacked by Zionist forces and by the British army and the Royal Air Force.[32] They received only mixed support from Arab villages, which feared Haganah reprisals,[33] since the Haganah continued attacks on villages and also attacked Arab farmers in their fields.[34]

On January 5 LEHI set a bomb in Jaffa in a building that housed the Arab Higher Committee, killing an estimated thirty people, including Arab refugees who had been temporarily housed in the building.[35] The same day the Haganah set a bomb in the Semiramis Hotel in an Arab district of west Jerusalem that killed twenty-six people. The Haganah said it had erroneous information that the hotel housed Arab irregulars.[36] The British government issued a statement denouncing the attack as a "dastardly and wholesale murder of innocent people." The Jewish Agency replied that the British government had not similarly criticized killings done by Arabs. British officials rejoined that Arab elements had not carried out organized attacks on buildings containing women and children.[37]

The Irgun began to direct its attacks at major Arab population centers. According to Irgun leader Begin, at a meeting of the Irgun command in late January four targets were selected: Jerusalem, Jaffa, the Lydda-Ramleh area, and the Triangle.[38] Lydda and Ramleh are adjoining towns in central Palestine; the Triangle is an area in northern Palestine, between the Arab towns of Nablus, Jenin, and Tulkarm. To promote this action, Irgun Radio called for greater cooperation between the Haganah and itself.[39]

In Cairo the Arab League announced that when Britain withdrew it would intervene militarily to occupy all of Palestine.[40] But Abdullah told the Jewish Agency privately that his intention remained firm not to interfere with the establishment of a Jewish state.[41] And Britain—whose officers still commanded Abdullah's Transjordan legion—encouraged Abdullah in his plans to annex part of Palestine, but to avoid attacking Jewish-populated areas.[42] Far from being concerned about Abdullah's intention to send troops into Palestine, the Agency encouraged him to do so. It hoped that Abdullah could convince the Palestine Arabs to accept a Jewish state and that he might physically prevent the Arab Higher Committee from establishing an Arab state.[43]

As the British administration prepared to leave Palestine, the Jewish Agency assumed authority.[44] By February it had a "complete blueprint of government" and began actual administration.[45] Arabs were beginning to flee from some rural areas and some urban districts, and on February 5, 1948, Ben-Gurion ordered that Jews be settled in conquered and abandoned Arab areas. The Haganah rocketed

Arab neighborhoods in Jerusalem, causing many Arab residents to flee.[46] On February 6 the Arab Higher Committee told the UN Palestine Commission, which had been appointed in Resolution 181 to supervise partition, that any attempt "to establish a Jewish state in Arab territory" would be "an act of aggression which will be resisted in self-defense by force."[47]

Speaking to the Mapai party's central committee on February 7, Ben-Gurion expressed satisfaction at the exodus of Arabs. "Since Jerusalem's destruction in the days of the Romans," he said, "it hasn't been so Jewish as it is now." In "many Arab districts" in the western part of Jerusalem "one sees not one Arab. I do not assume that this will change." And "what had happened in Jerusalem," he continued, "could well happen in great parts of the country. . . . Certainly there will be great changes in the composition of the population in the country."[48] "For the Arabs of the Land of Israel," according to Ben-Gurion, "there remains only one function: to flee."[49] On February 12, 1948, after a Jewish woman was shot in the Talbieh district of Jerusalem, a Haganah loudspeaker van drove through the neighborhood ordering the Arab residents to evacuate. Many of them did.[50]

On March 5, 1948, the UN Security Council adopted a resolution asking its five permanent members—Britain, France, China, the USSR, and the United States—to make recommendations on how partition might be implemented.[51] But the strongest supporter of partition, the United States, was having second thoughts. The State Department's policy planning staff, in a report to the secretary of state, noted the Palestine Arabs' rejection of partition. The staff expressed fear that, in light of that rejection, U.S. support for partition ran counter to the Palestine Arabs' right of self-determination. The staff suggested the United States abandon the partition recommendation.[52]

On March 19 the United States suggested to the Security Council that partition be abandoned. It advised the council to ask the General Assembly to set up a temporary trusteeship over Palestine until the two parties reached a settlement.[53] On April 1, at the urging of the United States, the Security Council asked the General Assembly to "consider further the question of the future government of Palestine"; in other words, to seek a solution other than partition.[54] The council did not seriously consider the possibility of using UN troops to force partition on the Palestine Arabs.[55]

Thus, the United Nations abandoned the partition idea scarcely four months after laboring long and hard to approve it. The abandonment of partition is not surprising, however, in light of the Arab rejection of it. The General Assembly had approached the Palestine issue with the aim of making proposals that the parties might accept.[56] In Resolution 181 it had recommended the adoption and implementation of the partition plan and asked the inhabitants of Palestine to take "such steps as may be necessary on their part to put this plan into effect."[57]

When it posed the Palestine question to the General Assembly in 1947, Britain had asked the assembly to exercise its power of recommendation. In its request it referred to the assembly's powers under Charter Article 10, which gives the assembly the power to make recommendations.[58] In Resolution 181 itself, the assembly had made reference to charter provisions giving it a power of recommendation by stating that it "considers that the present situation in Palestine is one which is likely to impair the general welfare and friendly relations among nations."[59] The phrases "general welfare" and "friendly relations" are drawn from Charter Article 14, which gives the General Assembly the power of recommendation.

Member states viewed Resolution 181 as a recommendation.[60] In the Security Council discussion that led to the abandonment of Resolution 181, the United States said that General Assembly recommendations have only "moral force."[61] Britain told the Security Council it would not implement partition so long as Arab or Jewish authorities objected.[62] Syria,[63] Egypt,[64] Saudi Arabia,[65] Yemen,[66] Pakistan,[67] and Iraq[68] told the council they did not consider the partition recommendation binding on them.

Resolution 181 contemplated voluntary compliance in its mechanism for selecting provisional leaders of the two projected states. A UN commission, "after consultation with the democratic parties and other public organizations of the Arab and Jewish States," was to "select and establish in each State as rapidly as possible a Provisional Council of Government."[69] Since this cooperation did not materialize, Resolution 181 remained a recommendation only.[70]

Resolution 181 also requested the Security Council "determine as a threat to the peace" any attempt "to alter by force the settlement envisaged by this resolution."[71] This provision was later cited as indicating that the General Assembly intended "a solution to be imposed

by force," and therefore "not a simple recommendation."[72] But this appeal was not more than a recommendation.[73] The assembly used the term "request," an indication it was aware of the limit of its power.[74] The United States, commenting on the assembly's request to the council, said that the charter "does not empower the Security Council to enforce a political settlement made "pursuant to a recommendation of the General Assembly."[75]

Moreover, the General Assembly, when it asked the Security Council to deal with a possible attempt to alter by force the settlement envisaged in Resolution 181, contemplated a situation in which the two parties were creating the two states voluntarily but where an outside party might intervene militarily. U.S. representative Warren Austin said this provision referred to an attempt to frustrate partition "on the part of states or people outside Palestine."[76] Resolution 181 did not purport to convey title to territory,[77] and since partition had not been accepted by the parties no territorial rights were created.[78] Resolution 181 had failed;[79] it was a "dead letter."[80]

6

Whose Land to Give? The UN Power over Palestine

Ma è ancora casa di altri.
(But it is still the home of other people.)
Response of King Victor Emmanuel III of Italy, January 23, 1904, to Theodor Herzl's request for a Jewish state in Tripoli

Moshe Shertok (later Moshe Sharett), head of the Jewish Agency political department, said in the United Nations that the General Assembly was legally competent to determine the future status of Palestine and that its Resolution 181 carried binding force.[1] But the General Assembly of the United Nations is not a legislature for the world. The UN Charter, in Articles 10, 11, and 14, gives it only the power of recommendation. The assembly makes binding decisions only on internal UN matters, like setting the budget or electing members of the International Court of Justice.[2] Thus, even if the assembly had intended to impose partition, it is not clear it had the legal authority to do so.

Leading early students of the UN Charter said that in adopting Resolution 181 the General Assembly had only the power of recommendation. Hans Kelsen, citing Resolution 181, wrote that General Assembly recommendations "do not constitute a legal obligation to behave in conformity with them."[3] Leland Goodrich and Edvard Hambro, also citing Resolution 181, stated that "recommendations have no obligatory character."[4] Clyde Eagleton said that "a resolution of the General Assembly, such as that for the partition of Palestine, is no more than a recommendation" and "can have no legally binding effect upon any state whatsoever."[5] The U.S. deputy representative to the Security Council said during the Palestine debate that the General Assembly had the power only to recommend a settlement.[6]

A lawyer from the UN secretariat, F. Blaine Sloane, argued to

the contrary, saying that Resolution 181 carried binding force. He stated that the General Assembly has the power to decide the status of territory whose sovereignty is unclear. In areas "where sovereignty is not vested in a member State," the General Assembly, "acting as the agent of the international community," may take "a binding decision."[7] On this view, Resolution 181 gives Israel valid title to Palestine. But few lawyers agreed with him. By the UN charter, the General Assembly is given no power over territory any broader than its general power of recommendation.[8] The assembly, according to Ian Brownlie, a later student of the charter, has no "capacity to convey title," since it "cannot assume the role of territorial sovereign." Even as regards disposition of territory, Brownlie wrote, the assembly "only has a power of recommendation."[9] The assembly, wrote Elihu Lauterpacht, another leading student of the charter, could not "give the Jews and the Arabs in Palestine any rights which either did not otherwise possess."[10]

It has been argued by some scholars, however, that even if the General Assembly has no power over territory generally, it has decisionmaking power over territory that was under a League of Nations mandate. Emile Geraud, a former legal officer of both the League of Nations and United Nations, said that the United Nations succeeded to the League's power over mandate territory.[11] The assembly, stated Allan Gerson, possesses an "adjudicative role" to terminate a mandate that is "beyond its normal recommendatory role."[12]

This argument relies largely on the International Court of Justice advisory opinions on Namibia (South-West Africa) of 1950 and 1971.[13] The court said in 1950 that the competence to determine and modify the international status of a League of Nations mandate territory rested with the mandatory, "acting with the consent of the United Nations."[14] Nathan Feinberg, a legal scholar of the Hebrew University in Jerusalem, argued that Resolution 181 was an agreement between Britain and the United Nations to change the status of Palestine.[15]

In 1971 the International Court of Justice discussed the legal significance of General Assembly Resolution 2145, which affirmed the right of the people of Namibia to independence and decided that South Africa's mandate "is therefore terminated, that South Africa has no other right to administer the Territory and that henceforth South-West Africa comes under the direct responsibility of the

United Nations."[16] The court upheld the legality of that resolution, stating: "To deny to a political organ of the United Nations which is a successor of the League in this respect the right to act, on the argument that it lacks competence to render what is described as a judicial decision, would not only be inconsistent but would amount to a complete denial of the remedies available against fundamental breaches of an international undertaking."[17] Gerson cited this language to argue that the General Assembly has the power to determine the status of a League of Nations mandate territory and that Resolution 181 was such a resolution and was binding.[18]

What the court found, however, was that the General Assembly had supervisory power over the South-West Africa mandate. The court made it clear that this power "derived from" Article 10 of the charter, "which authorizes the General Assembly to discuss any questions or any matters within the scope of the Charter and to make recommendations on these questions or matters to the Members of the United Nations."[19] Thus, the power it found in the assembly to supervise former mandate territories is only a power to make recommendations.

The issue in the two Namibia advisory opinions, moreover, was different from that raised by the situation in Palestine. South Africa had declared an intent to incorporate the mandate territory. The court said that South Africa could not do so without consent of the General Assembly. The court recognized the people of the territory as a "jural entity," possessing rights under the mandate. It could have found, as did dissenting Judge Fitzmaurice, that South Africa was precluded from incorporating the territory solely by virtue of terms of the mandate instrument, which forbade incorporation.[20] The instrument was a treaty between the League and South Africa,[21] and it survived the League's demise in the court's view.[22] That obligation flowed not to the United Nations or any of its organs, but rather to the other members of the League and to the people of South-West Africa, who were a third party beneficiary of the mandate instrument.[23]

The court said that Resolution 2145 fell within what it found to be a power of the General Assembly to supervise former League mandates.[24] If the court had not found supervision to be within the assembly's competence, South Africa would have had only an obli-

gation to make reports on South-West Africa "for information purposes."[25] But the court found supervision to be an essential aspect of the mandate system: "The obligation incumbent upon a mandatory State to accept international supervision and to submit reports is an important part of the Mandates System."[26]

The court had not been asked by the General Assembly, however, whether the assembly had supervisory functions over the South-West Africa mandate. The assembly had asked only whether South Africa was required to conclude a trusteeship agreement with the assembly, and whether South Africa could modify the status of South-West Africa unilaterally.[27] To answer these questions, the court had no need to state whether the General Assembly had supervisory functions.

The court's statement that the assembly exercised "supervisory functions" made little sense in the context of the League's demise and the founding of the United Nations. Judge McNair, dissenting, said that "the succession of the United Nations to the administrative functions of the League of Nations in regard to the Mandates could have been expressly preserved and vested in the United Nations" by an appropriate provision in the UN Charter. But, he noted, "this was not done."[28] McNair also stated: "The United Nations did not succeed to the rights of the League of Nations as to the former mandated territories. . . . There is no legal continuity in the relations of these two systems."[29]

The United States had agreed with McNair's view in a Security Council discussion of Resolution 181 in 1948. "The United Nations does not automatically fall heir to the responsibilities either of the League of Nations or of the Mandatory Power in respect of the Palestine mandate. The record seems to us entirely clear that the United Nations did not take over the League of Nations Mandate system."[30]

Subcommittee 2 also said the United Nations "has not inherited the constitutional and political powers and functions of the League of Nations" and is not "the successor of the League of Nations insofar as the administration of mandates is concerned." In addition, UN powers over mandate territories are limited "by the specific provisions of the Charter," and "neither the General Assembly nor any other organ of the United Nations" is competent to "recommend or enforce" a "solution with regard to a mandated territory."[31]

One reason that the United Nations could not succeed to the League's power of supervision is that the supervision to which mandatory powers agreed under the League of Nations mandate system was significantly less onerous than what the court said could be imposed on South Africa. The League's supervision over mandates was exercised by its council, which functioned on unanimity.[32] All the mandatory powers were council members. France, Britain, Japan, and Belgium were members themselves, and Britain represented the interests of the mandatory powers that belonged to the Commonwealth—South Africa, Australia, and New Zealand. Thus, each mandatory power possessed a veto on a decision regarding its performance.[33]

The General Assembly in this situation operates by two-thirds majority voting.[34] Thus, a decision adverse to the mandatory power could be taken over its negative vote. A state which assumed a League mandate did not consent to such a procedure. There would be an "excess of supervision if the decision of the General Assembly reached by a two-thirds majority," stated Judge Lauterpacht of the International Court of Justice, "had the same legal and binding force as unanimous resolutions of the Council of the League of Nations."[35]

Even if the General Assembly had supervisory power over a former League of Nations mandate territory, that would not give it the power to determine the territory's future status.[36] With trusteeship, the UN analogue to the League of Nations mandate system, the assembly has no power to make decisions binding on an administering state. "The Trusteeship Agreements," stated Judge Lauterpacht, "do not provide for a legal obligation of the Administering Authority to comply with the decisions of the organs of the United Nations in the matter of trusteeship. Thus there is no legal obligation, on the part of the Administering Authority, to give effect to a recommendation of the General Assembly to adopt or depart from a particular course of legislation or any particular administrative measure. States administering Trust Territories . . . have often asserted their right not to accept recommendations of the General Assembly." That right "has never been seriously challenged."[37]

In its advisory opinion on Namibia, the International Court of Justice did not decide whether the General Assembly has the power to decide on the future status of a mandate territory against the wishes

of the inhabitants, which is the issue if it is asserted that Resolution 181 is a binding decision. In the Namibia situation the decision of the assembly—to prohibit South Africa from incorporating the territory—was in accord with the wishes of the population. But Resolution 181 foresaw a territorial solution unacceptable to the majority of Palestine's inhabitants. The Namibia advisory opinions do not suggest the assembly has the power to adopt a territorial solution against the wishes of the inhabitants.

If Resolution 181 were considered a binding determination of future status, it would violate the Palestine Arabs' right of self-determination. Some have argued that it did not violate the right of self-determination of the Palestine Arabs since it recognized the claims of both the Arab and Jewish communities in Palestine.[38] But since partition was against the will of the majority of inhabitants, the right to self-determination was violated.[39] The Palestine National Covenant, which was adopted in 1968 as a statement of principle by the Palestine Arabs, construed Resolution 181 as a binding decision. On that basis it considered it "null and void" since "it was contrary to the wish of the people of Palestine and its natural right to its homeland, and contradicts the principles embodied in the Charter of the United Nations, the first of which is the right of self-determination."[40]

Moreover, the population of Palestine has specific rights under the UN Charter. The charter states that the rights of a people under a League of Nations mandate may not be altered to its detriment.[41] The charter contemplated that League mandates would be converted into trusteeships. Article 80 stated that nothing in the charter's chapter on trusteeship could alter the rights "of any states or any peoples or existing international instruments to which Members of the United Nations may respectively be parties." Thus, the rights of the Palestinian people under the mandate instrument are preserved. Arab states, in arguing that partition would violate the rights of the Palestine Arabs, relied on Article 80.[42]

Subcommittee 2 said that a partition of Palestine against the consent of the population would violate that population's rights. The United Nations "cannot make a disposition or alienation of territory, nor can it deprive the majority of the people of Palestine of their territory and transfer it to the exclusive use of a minority in their country."[43]

There is one other difference between the Namibia case and the

Palestine case. The League had made Palestine a class "A" mandate, but it made South-West Africa a class "C" mandate. The covenant described a community under a class "C" mandate as "best administered under the laws of the Mandatory as integral portions of its territory," whereas a class "A" mandate was to be governed separately.[44] Thus, even if the International Court of Justice had decided that the assembly had the power to resolve the status of mandate territory against the wishes of its inhabitants, that would not give the assembly a similar power over Palestine.[45]

It has been argued that even if the Palestine Arabs once had a right to self-determination, they forfeited it by not establishing a state as recommended in Resolution 181.[46] But Resolution 181, as indicated, proposed a solution that would violate the Arabs' right to self-determination. They cannot be considered to have forfeited their right to self-determination by rejecting a proposal which would have violated that right.

One other argument has been made to reach the conclusion that Resolution 181 was binding. The argument is that even if the General Assembly did not have the power to issue a binding decision on the future status of Palestine, the Security Council "re-affirmed" Resolution 181 and thereby made it binding.[47] The council, unlike the assembly, has the power under the UN Charter to make decisions that are binding on member states.[48] Security Council Resolution 42 is cited, in which the council asked its five permanent members to make recommendations regarding "instructions which the Council might usefully give to the Palestine Commission with a view to implementing the resolution of the General Assembly."[49] Security Council Resolution 46 is also cited, in which the council called on each of the two parties to refrain from actions that might frustrate the claims of the other.[50] From Resolution 54 language is cited in which the council decided a truce should remain in force "until a peaceful adjustment of the future situation of Palestine is reached."[51]

None of this language implies an affirmation of Resolution 181 by the Security Council. In April 1948, when the Security Council became aware that Resolution 181 was unrealistic, it abandoned it.[52] Even if the council had "re-affirmed" Resolution 181, that would not render it binding. While the council has decisionmaking power on some subjects, it does not have a power to dispose of territory.



Part Two

The 1948 War and the Establishment of Israel



7

Sten Guns and Barrel Bombs: The Realization of the Zionist Dream

Run for your lives . . . in the name of Allah!
—Haganah Loudspeaker Message

"We needed weapons urgently," said Golda Meir, "but before we could buy anything, we needed money . . . millions of dollars. And there was only one group of people in the whole world that we had any chance of getting these dollars from: the Jews of America." Meir toured the United States and by her account raised $50 million, which was used by the Haganah to buy arms clandestinely in Europe.[1] Overall in 1948 Zionist fund-raisers collected $150 million from U.S. Jewry.[2]

The Arab irregulars directed their efforts at protecting Arab-populated sectors.[3] But the Jewish Agency did not restrict itself to Jewish-populated sectors, or even to the area projected for a Jewish state in Resolution 181, which included many Arab-populated sectors. In early March the Haganah command agreed on a set of war objectives it called "Plan D." The plan called for "control of the area given to us by the UN in addition to areas occupied by us which were outside these borders."[4] The latter phrase referred to Zionist settlements in parts of Palestine projected in Resolution 181 for an Arab state. The formulation in Plan D was vague but if read broadly could include most of Palestine. The Irgun and LEHI, meanwhile, still proclaimed their goal as not only Palestine but Transjordan as well.[5]

Plan D called for the destruction of Arab villages, the expulsion of Arabs, and Jewish settlement to replace them.[6] The Haganah stepped up attacks on Arab villages, killing inhabitants and blowing up houses. The attacks became so intense that Elias Sasson, director of the Arab division of the Jewish Agency political department, expressed concern at a departmental Agency meeting on March 25 that the Agency might not be able to prove "that we weren't the

aggressors."[7] Ezra Danin, a senior Haganah intelligence service officer, said at the same meeting that the military operations had caused a "mass exodus from all places."[8] This exodus was a result of attacks by the Haganah, Irgun, and LEHI, and of fear of more attacks.[9] By late March most of the Arab rural population on the coastal plain had fled.[10] On April 6, 1948, Ben-Gurion was self-congratulatory: "We have hit the Arab guerrillas hard, villages have been emptied in panic, even from Haifa one-third of its Arabs have fled."[11]

Against the Haganah, Irgun, and LEHI, the Arab irregulars were ineffective. In addition to their weakness in numbers, equipment, and training, the two Arab forces were at odds with each other. The Arab Liberation Army sided with King Abdullah and therefore did not cooperate with the irregulars loyal to the Arab Higher Committee.[12]

One of the first operations undertaken to implement Plan D was Operation Nachson, which aimed at ensuring Jewish Agency access to the important Jerusalem–Tel Aviv highway.[13] On April 9 the Irgun and LEHI captured the village of Deir Yassin, just west of Jerusalem on the Jerusalem–Tel Aviv highway. Shortly after taking Deir Yassin, Irgun and LEHI soldiers killed 250 of its civilian inhabitants.[14] The Irgun claimed it had killed the inhabitants while taking houses by force, but witnesses said they killed them after fighting ended.[15] Toynbee called the killings "comparable to crimes committed against the Jews by the Nazis," since a large number of civilians were killed outside a combat situation.[16]

The Irgun announced that the action was the first step in the conquest of Palestine and Transjordan.[17] It paraded surviving Deir Yassin inhabitants in trucks in Jerusalem the same day as a demonstration to Jerusalem's Arabs.[18] Later that day it killed these survivors.[19] The Haganah too utilized the Deir Yassin killings. It proclaimed in Arabic from loudspeaker vans in Jerusalem, "unless you leave your homes, the fate of Deir Yassin will be your fate."[20] The apparent aim was to frighten other Arabs into leaving Palestine.[21] Memory of Irgun attacks on Arab civilians in 1936 heightened the Arabs' apprehension. After the Deir Yassin killings, many Arabs, particularly in unprotected rural areas, left for neighboring countries.[22] A week after the Deir Yassin killings, the United States denounced Irgun and LEHI attacks on Arab civilians since the adoption of Resolution 181 as "widespread terrorism and wilful murder which had shocked the entire world."[23]

The Haganah, Irgun, and LEHI secretly coordinated strategy in the early months of 1948.[24] But two days after the Deir Yassin attack the Irgun and Haganah concluded a formal pact of cooperation.[25] The Haganah agreed to try to keep the press from denouncing Irgun terrorism and to ask Britain to stop demanding the disbanding of Zionist terrorist organizations.[26] The Irgun and Haganah thereafter held regular strategy conferences.[27]

Jewish Agency forces effectively used psychological warfare to supplement direct force.[28] Haganah radio spread rumors that cholera and typhus would break out in April and May in Arab areas.[29] It announced—falsely—that smallpox had been reported in Jaffa as a result of the arrival of Syrian and Iraqi irregulars.[30] The Jewish Agency organized "whispering campaigns" to have Jews advise Arab neighbors to leave.[31]

When they attacked Arab towns, Haganah units used barrels filled with explosives, a device that had been developed by the Irgun.[32] As explained by Leo Heiman, a Haganah officer, they sent these barrel bombs "crashing into the walls and doorways of Arab houses" to encourage the residents to flee. The bombs "exploded with a furious sound, like an erupting volcano, sending up sheets of flame and pillars of nauseating smoke." Then the Haganah personnel brought up jeeps with loudspeakers which broadcast tape-recorded horror sounds. "These included shrieks, wails, and anguished moans of Arab women, the wail of sirens and clang of fire-alarm bells, interrupted by a sepulchral voice calling out in Arabic: 'Save your souls, all ye faithful! Flee for your lives! The Jews are using poison gas and atomic weapons. Run for your lives in the name of Allah!'"[33]

On April 17, 1948, the Security Council called for a truce in the Palestine fighting.[34] But the Zionist forces pressed their attack. That same day the Palmach, an elite unit of the Haganah, attacked Tiberias, the first Zionist assault on a major town in the Galilee. Using barrel bombs and loudspeaker warnings, the Palmach set the entire Arab population of Tiberias to flight.[35] "A hasty exodus of Arabs from Tiberias continued all day long, and scores of Arab trucks, carrying panic-stricken foreign Arabs and local families, moved out in long convoys," reported the *Palestine Post*.[36] The Haganah began to demolish villages it captured. After taking Beit Surik and Biddu, villages north of Jerusalem, it "levelled every house

except the two Mosques. More than 100 buildings were destroyed."[37]

On April 21 the Haganah and Irgun attacked Haifa, the terminus of the Iraqi oil pipeline. According to the *Palestine Post*, a Zionist daily, the Haganah "said that the Arabs had been warned by leaflets in Arabic for two days" to "evacuate women, children and old men immediately." The Haganah said that it repeated the warning from loudspeaker trucks.[38] The messages threatened dire consequences if the warnings were ignored.[39] The Haganah lobbed mortars into densely populated neighborhoods in Haifa, rolled barrel bombs into alleys, and played horror recordings.[40] The combination of bombings and threats succeeded in setting the population to flight. The "barrages making loud explosive sounds" and the "loudspeakers in Arabic," according to an assessment by the Haganah intelligence branch, "proved their great efficacy when used properly (as in Haifa particularly)."[41]

The flight of Arab residents from Haifa reached the level of panic even before the main attack.[42] In "whatever transport they could find, many of them on foot—men, women, and children—moved in a mass exodus toward the port area," the *Palestine Post* reported. "Then thousands stormed the gate and streamed to the seaside to be taken to Acre by Army landing crafts."[43] Some shouted "Deir Yassin" as they left, reported Menachem Begin, proud at the impact of his Irgun's mass killing two weeks earlier.[44]

As families fled, the Haganah directed gunfire at them to keep them moving.[45] British officials reported "indiscriminate and revolting machine gun fire" by the Haganah "on women and children" as they ran for the docks. They said there was "considerable congestion" of "hysterical and terrified Arab women and children and old people on whom the Jews opened up mercilessly with fire."[46] Haganah commander Ben Zion Inbar recalled: "we manned the biggest mortar which our forces had at that time—a three-inch mortar—and when all the Arabs gathered in this area we started firing on them. When the shells started falling on them, they rushed down to the boats and set off by sea for Acre."[47] (Acre is another coastal town, to the north of Haifa.)

An account was later disseminated that Haifa's Arabs fled not from fear but because local Arab leaders decided on an evacuation to avoid living under Zionist rule.[48] Arab leaders in Haifa did meet with Haganah officers but only after the population was already in flight.[49]

At that meeting the Haganah offered a truce that the Arab leaders rejected; the leaders instead asked the British commander to ensure the safety of those fleeing.[50]

A few days later the Irgun attacked Jaffa.[51] For three days, beginning April 26, it shelled residential districts, causing civilian casualties and terrifying the population.[52] The Haganah joined the attack on April 29. The result was a "mass exodus" by sea and overland.[53] The panic flight was caused both by "the repute which propaganda had bestowed" on the Irgun, and by the scale of the bombardment, according to Irgun leader Begin.[54] Shmuel Toledano, a Haganah intelligence officer who would later be a member of Israel's parliament (Knesset), recited the same two reasons for the Arab flight from Jaffa. "First, because the Etzel [Irgun] had been shelling Jaffa for three weeks before the Haganah entered, making the Arabs very much afraid; some already began to leave as a result of that shelling by Etzel." Second, "there were rumours, based on the Etzel's reputation," that "the minute the Jews entered the town, the inhabitants would all be slaughtered."[55] The Irgun fired at fleeing residents.[56]

The Palmach was the military force primarily responsible for the Galilee, and its commander, Moshe Dayan, said that the new state must be "homogeneous," with as few Arabs as possible.[57] From many villages in the Galilee the Palmach removed entire populations by force. In Er Rama village, which it captured April 24, it ordered inhabitants to assemble in the square and forced nearly all the residents to go north into Lebanon.[58] On May 1 it captured the village of Ein ez Zeitun after rolling explosive-filled barrels down a hill into the village and throwing in hand grenades. The Palmach then forced all the inhabitants to the edge of town, ordered them to leave, and fired over their heads as they went.[59]

In late April the Haganah also attacked Arab sectors of Jerusalem and took the Sheikh Jarrah and Katamon districts, resulting in the flight of Arab residents.[60] In early May the Palmach took two more major towns in the Galilee. The Palmach shelled Safad, and when the fall of the town became imminent the Arab residents fled.[61] Yigal Allon, the Palmach commander, said of the assault on Safad: "The Arab population fled. We did everything to encourage them to flee."[62] The Palmach then attacked Beisan. Its shelling led some of its Arab population to flee, and after taking the town it expelled most

of the rest.[63] Allon said the Haganah "saw the need to clean the inner Galilee, to cause the tens of thousands of sulky Arabs who remained in Galilee to flee." He convinced village elders to urge villagers "to escape while there is still time."[64] In the Galilee village of El Bassa, which it captured May 14, the Palmach forced the population into the village church, where it shot and killed a number of youths. It then forced the other inhabitants out of the village.[65]

As the expulsion drive gained momentum, the UN General Assembly continued to work toward a trusteeship, as advised by the Security Council. Nonetheless, the Jewish Agency continued to insist on partition, viewing Resolution 181 as giving it a legal right to statehood. On April 9 Weizmann referred to Resolution 181 as a "grant of independence" for a Jewish state.[66] At the United Nations, Jewish Agency representative Moshe Shertok said that in Resolution 181 the General Assembly had "conferred statehood" on both Jews and Arabs.[67] As a result of the recent hostilities a Jewish state "already existed," making discussion of a trusteeship moot. He chided the United States, which had proposed trusteeship, juxtaposing that policy with the U.S. support for UN membership of recently independent Arab states. It was "incongruous for the United States to endorse the claims of those relatively primitive societies to sovereignty and membership in the United Nations and yet advocate further tutelage for both peoples of Palestine."[68] The Arab Higher Committee said that if no trusteeship were established, it would declare statehood.[69] But the committee had little chance of holding territory, since the Jewish Agency was rapidly advancing and King Abdullah was planning to incorporate part of Palestine.

British journalist Harry Levin, working for the Haganah, wrote on April 28 of the accelerating Arab flight from Palestine: "it has become panic . . . all over the country, even from places not directly in the fighting line."[70] The *Palestine Post* reported the Arabs of Palestine were "in panic flight."[71] In a speech to the Jewish National Council on "the success of Jewish arms," Ben-Gurion said "the Arabs had left 100 villages, and 150,000 of them were on the move."[72] By mid-May 300,000 Arab refugees had fled from the territory occupied by the Zionist forces.[73] The Haganah intelligence branch said the "main cause of the movement of population" was "hostile operations,"

which, it added, accounted for 55 percent of the flight. It attributed another 15 percent to fear engendered by prior terror attacks.[74]

Despite its January decision to send troops into Palestine upon Britain's withdrawal, the Arab League had made no preparations for intervention. In early April it was encouraged by the General Assembly's abandonment of the Resolution 181 partition plan and hoped for a political solution. But by late April the Zionist forces had captured Haifa and Jaffa, and the flight of Palestine's Arabs was becoming evident in neighboring Arab states. Pressure built on Arab governments to protect the Palestine Arabs, and on April 29 the League decided to intervene.[75]

As the Palestine Arabs fled, the Arab Higher Committee and Arab governments, in radio broadcasts, urged them to remain in place.[76] The Arab Higher Committee broadcast particular appeals to Arab civil servants to remain at their posts, and these broadcasts were reported in the *Palestine Post*.[77] In an April 24 broadcast the committee characterized as "cowards" any who "deserted their homes."[78] In Jerusalem on April 27 the local national committee appealed to residents to stay.[79] In a Palestine Broadcast Service message Anwar Nuseibeh, secretary of the Arab Higher Committee, urged Arab Jerusalemites to "remain calm and avoid chaos."[80] The Haifa national committee issued at least twelve communiqués urging the population of Haifa to remain,[81] and the Haganah radio reported these appeals.[82] A Haganah internal report said that "the Arab institutions attempted to struggle against the phenomenon of flight and evacuation."[83]

The Arab Higher Committee urged Arab states not to grant entry permits to Palestine Arabs.[84] A radio message on May 4 by King Abdullah asked Palestine Arabs who had left to return and praised those who had stayed.[85] Egypt announced on May 5 that Palestine Arab men aged eighteen to fifty would not be admitted into Egypt.[86] As reported by the Haganah radio, Lebanon ordered all Palestine refugees aged eighteen to fifty to leave Lebanon within forty-eight hours.[87]

A U.S. State Department official, Robert McClintock, accurately predicted on May 4, 1948, what would occur upon British withdrawal, scheduled for May 14: "In light of the Jewish military superiority which now obtains in Palestine, the Jewish Agency will prefer to

round out its State after May 15 and rely on its armed strength to defend that state from Arab counterattack." If the Agency were to use force to establish a state, McClintock said, "the Jews will be the actual aggressors against the Arabs. However, the Jews will claim that they are merely defending the boundaries of a state which were traced by the UN."[88]

By May 14, the date set for Britain's renunciation of authority, the General Assembly had not finalized its trusteeship recommendation. Instead, it proposed a truce and appointed a mediator "to promote a peaceful adjustment of the future situation of Palestine." At the same time it relieved of its duties the commission it had established in Resolution 181 to supervise partition.[89]

On May 14, 1948, Britain renounced authority in Palestine, and its troops were in the final phase of withdrawal. The Arab Higher Committee did not proclaim statehood, but the Jewish Agency did, issuing a Declaration of the Establishment of the State of Israel. "By virtue of our natural and historic right and on the strength of the resolution of the United Nations General Assembly," the declaration read, we "hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel."[90] Thus, the Agency ignored the General Assembly's abandonment of partition and insisted that Resolution 181 gave them legal entitlement.

Similarly, when the Jewish Agency informed the United Nations of its declaration, it cited Resolution 181 as "recognition by United Nations" of a "right of Jewish people to establish their independent state."[91] Abba Eban, addressing the United Nations on behalf of the Agency, called Israel "the first state to be given birth by the United Nations."[92] Two Zionist lawyers said at the time that Israel was established "in pursuance of the United Nations Resolution," which was not "a mere act of international ratification of the existence of a new State which had already established itself." They said the "international decision had preceded the emergence of the State and thus may be said to have been its legal foundation."[93]

The declaration did not specify any borders for Israel. But in a message to President Truman urging him to recognize Israel, the Agency said it was proclaiming statehood "within frontiers approved by the General Assembly of the United Nations in its Resolution of November 29, 1947."[94] Use of the designation "Eretz Israel"

suggested, however, that broader claims might be intended. Truman immediately extended de facto recognition of Israel. That recognition led—according to Dean Rusk, director of the State Department's Office of Special Political Affairs—to "pandemonium" on the floor of the UN General Assembly, since delegates (including U.S. delegates) felt that the United Nations should establish a temporary trusteeship.[95]

8

Kaftans and Yarmulkes:

The Claim of Ancient Title to Palestine

I have been a stranger in a strange land.
—*Holy Bible,* Exodus 2:22

In addition to Resolution 181, the Jewish Agency relied for its claim to Palestine on self-determination and ancient title."[1] Its declaration's reference to "our natural and historic right" was to a claim of right based on the Hebrew kingdom that existed during the first millenium B.C. in a portion of Palestine. The declaration recited that "Eretz-Israel was the birthplace of the Jewish people."[2]

The Jewish Agency said that modern Jewry is the successor to the ancient Hebrews, who had been forced out of Palestine by the Romans. "We are in Palestine as of right," said Ben-Gurion. "We are at home there. Ever since the Jewish people has existed, Palestine has been, remains and will remain their national home—and to one's home one can always return as of right without having to ask anybody else's leave."[3] The "exile of eighteen hundred years that began with the Roman conquest" and "the destruction of the Jewish state," argued Moshe Avidán, Israeli ambassador to Chile, "does not invalidate the historic and natural right of the Jewish people over its ancestral land."[4] Zionist lawyers said the Agency's claim was "sanctioned by the principle of self-determination."[5]

The Jewish Agency based its claim on self-determination.[6] The League of Nations Covenant, as already indicated, treated self-determination as a right of dependent peoples to the extent of prohibiting new colonization. By 1948 the UN Charter had come into force, and it used language on self-determination that was stronger than that of the League's Covenant. The UN Charter took the League's requirement on states administering former Turkish and German colonies and applied it to all states administering colonies. The charter,

like the covenant, viewed administration of a nonself-governing territory as a "sacred trust" and required an administering state to make reports to the United Nations.[7] The charter stated that "equal rights and self-determination of peoples" was a "principle" of the United Nations.[8] But there was a question whether that charter declaration on self-determination made it a right.

The term "principle" was used in the Chinese, Spanish, English, and Russian versions of the charter. Some commentators argued that as a "principle," self-determination was not a right, but only an "aspiration."[9] "Principle," however, can mean a legal obligation.[10] The prohibition in Article 2 of the UN Charter against use of force is called a "principle." "The Organization and its Members," states Article 2, "shall act in accordance with the following Principles. . . . (4) All Members shall refrain in their international relations from the threat or use of force."

A complication in construing "principle" here is that the drafters of the UN Charter were not consistent in the five official languages in which they drafted the charter. The French text of the charter referred to self-determination as a "right" rather than a "principle." All five texts are official. When treaty texts vary, they must be reconciled.[11] If "principle" is ambiguous, "right" is not, and, therefore, "principle" must be read to mean a "right."

Subsequent UN practice confirmed that the charter's reference to self-determination was to a right. In 1950 the General Assembly asked for the UN Commission on Human Rights to "ensure the right of peoples and nations to self-determination."[12] In 1952 it referred to "the right of peoples and nations to self-determination as a fundamental human right."[13] Thus, self-determination did exist as a norm of law when the Jewish Agency made its claim to territory in Palestine in 1948.

It remains to apply that principle to the Agency's claim. Occupation and dominion are the key considerations in international law in a claim to territory, though in the twentieth century, when aggression was outlawed, naked possession was no longer sufficient.[14] But the initial consideration in a claim to territory is longevity of control over it. In Palestine the earliest period for which there is solid evidence as to the identity of the occupants is the second millenium B.C. At that time the most significant population group in Palestine was the

Canaanites.[15] They may have been associated with peoples who migrated to Palestine from the Arabian peninsula around 3500 B.C.[16] Because of the Canaanites, Palestine in the second millenium B.C. was called the Land of Canaan. Other population groups in Palestine in that era included the Babylonians, Sumerians, Accadians, Phoenicians, Hebrews, and Philistines (from whom the name Palestine derives).[17]

Hebrews constituted a substantial community in Palestine by the twelfth century B.C. and formed a state around 1000 B.C.—in the area that the Arabs today call the West Bank of the Jordan River.[18] The coastal plain continued to be occupied by the Philistines.[19] In 930 B.C. the Hebrew state split into a northern state called Israel, in Samaria, and a southern state called Judah, in Judea.[20] Hebrews constituted a majority in Judea, though it is uncertain whether they did in Samaria.[21] The Hebrews were driven out as rulers of Samaria by Assyria around 720 B.C. and as rulers of Judea by Babylonia around 590 B.C.[22] Some Hebrews, particularly from the upper classes, were deported to Babylonia, while the peasantry remained.[23] Many of these deportees returned to Judea around 500 B.C.[24]

The Hebrews regained dominance in Judea around 150 B.C.[25] They came to be called Jews because of their association with Judea.[26] At that period they extended their control over much of modern-day Palestine.[27] The Romans took over in 63 B.C., though Jews remained the majority population of Judea until many of them were expelled by the Romans in A.D. 133.[28] The population of Palestine thereafter was a mixture of Philistines, Canaanites, Greeks, and Romans.[29]

In the seventh century A.D. Arabs from the Arabian peninsula conquered Palestine. The population absorbed their Arabic language, and most adopted their Islamic religion, although some remained Christians.[30] Of the Jews who still lived in Palestine, some retained Judaism as their religion. But the Arab conquest had little impact on the ethnic composition of Palestine. The number of Arabs who came to Palestine was small, and they were absorbed into the local population. Therefore, as of 1880—the time just before the onset of Zionist immigration—the majority population of Palestine, though Arabized, descended from the Canaanites and other groups that inhabited Palestine in the second millenium B.C.[31] That population numbered about 450,000, while there were about 20,000 Jews.[32]

A difficulty with the Jewish Agency's claim was that claims to territory based on ancient title have not generally been recognized. Dur-

ing the House of Lords debate of the Balfour Declaration in 1922, Lord Sydenham said the Zionists "have no more valid claim to Palestine than the descendants of the ancient Romans have to this country."[33] The U.S. King-Crane Commission stated that the claim, "often submitted by Zionist representatives, that they have a 'right' to Palestine, based on an occupation of two thousand years ago, can hardly be seriously considered."[34]

To support the Zionist historical claim, Julius Stone argued that "no identifiable people now survives which can demonstrate any special relation to Palestine prior to the centuries of Jewish statehood there."[35] As indicated above, the Palestine Arabs derive from peoples who occupied Palestine before the time of the Hebrew kingdom. Thus, if ancient title were recognized, it would not necessarily support a Zionist claim.

The International Court of Justice rejected a concept of original, or ancient, title. In a dispute between Britain and France over two islands in the English Channel controlled by Britain in modern times, France claimed "an original feudal title." The court stated that France's ancient title "could today produce no legal effect."[36] If ancient title were recognized, the result would be perpetual war, as communities claimed the land that belonged to their ancestors.[37] Ancient title would require the dismemberment of many existing states.[38]

Even if ancient title were recognized, the Jewish Agency would still need to establish its connection to the population that inhabited Palestine in ancient times. A World Zionist Organization delegate to the Versailles Conference in 1919 referred to Palestine as the land of the Jewish people's "ancestors."[39] But this assertion was questioned. Joseph Reinach, an anti-Zionist Jewish member of the French parliament, argued in 1919 that Jews of "Palestinian origin" form only a "tiny minority" of contemporary Jewry. He said that the Jews "have been as zealous as proselytizers as Christians and Moslems"; that in ancient times they converted many Arabs, Greeks, Egyptians, and Romans, and made converts later in Asia, north Africa, Italy, Spain, and Gaul. Most "Russian, Polish and Galician Jews," he said, "descend from the Khazars, a Tatar people from the south of Russia who converted to Judaism in mass at the time of Charlemagne."[40]

A people claiming territory bears a burden to prove the facts

underlying its claim.[41] Ben-Gurion said that "race" does not unite Jewry since the ancient people "dissipated after so much dispersion."[42] But the Jewish Agency usually argued the opposite—that the Jews did not mix with other peoples. "Intermarriage has brought few additions," stated Louis Brandeis. "Therefore the percentage of foreign blood in the Jews of today is very low. Probably no important European race is as pure."[43]

Many Jews who remained in Judea and the Galilee converted to Christianity and lost their identity as Jews.[44] Many Jews who left Palestine intermarried, resulting in "an influx of non-Jewish genes into the Jewish groups from the earliest times to the present in most places and ages," in the words of Raphael Patai and Jennifer Patai Wing, two leading students of the subject.[45] In early times proselytism brought non-Jews into Judaism in Babylon, Syria, Arabia, Phoenicia, and Egypt.[46] In the last several centuries B.C. and the early centuries A.D. the substantial Jewish communities around the Mediterranean included many converts. In Europe Gallo-Romans converted to Judaism.[47] Proselytism continued in Europe into the Middle Ages,[48] with much of the large Jewish community in Spain consisting of converts.[49] The substantial Jewish population of southern Arabia, particularly in Yemen, was composed largely of Arabs who converted to Judaism,[50] for in Islamic countries Jews frequently converted their Arab slaves.[51] The Jews of China have always been predominantly Chinese, and the Falashas of Ethiopia predominantly African.[52]

In the area north of the Caspian and Black seas the sizable kingdom of the Khazars adopted Judaism as a state religion in the eighth century.[53] Large sections of the population converted,[54] and the Khazars adapted the Hebrew alphabet to write their Turkish-related language.[55] Khazars migrated into Slavic-speaking areas,[56] particularly after the Mongols destroyed Khazaria in the eleventh century.[57] A Khazar subgroup called the Kabars, who also followed Judaism,[58] accompanied the Magyars westward and founded Hungary.[59] Khazars migrated to Poland and Lithuania, establishing Jewry there.[60] The presence of some fair-complexioned persons in Eastern European Jewry is cited to show Khazar descendance, since there were fair-complexioned persons among the Khazars.[61] There is similarity as well between Khazars and Eastern European Jews in male attire, particu-

larly the long kaftan robe, the yarmulke skullcap, and the large round fur-trimmed hat.[62]

A competing theory is that Eastern European Jewry is made up largely of Jews who migrated from Western Europe to escape persecutions that accompanied the Crusades (eleventh century) and the Black Death (fourteenth century),[63] or that such eastward migrations supplemented the Khazar-Jewish population.[64] There is no contemporary evidence, however, of eastward migration of Jews during the Crusades or the Black Death.[65] But evidence of such migration is sketchy,[66] and most scholars find the East European Jews to be predominantly Khazar-descended.[67]

One aspect of the Jewish Agency's historical claim was that, although few Jews remained in Palestine, Jews retained a strong psychological attachment to it.[68] The Agency's declaration recited that "the people kept faith with" Israel "throughout their dispersion" and "never ceased to pray and hope for their return to it and for the restoration in it of their political freedom."[69] The declaration alludes here to a religious doctrine that Palestine was promised to the Jews.[70] Until the development of Zionism in the late nineteenth century, however, the biblical promise was not taken as a promise of a territorial state.[71] The idea of establishing a Jewish state in Palestine emerged only in the nineteenth century.[72]

Israeli officials later would repeat this position. Ben-Gurion said that "the Romans, the Persians, the Byzantines, the Arabs, the Mongols, the Crusaders, the Turks have reigned in the country," but that "in the eyes of generations of Jews, it was Eretz-Israel." The "uniqueness of the country in the soul of the Jewish people and in Jewish history" is "a fact as solid as iron that thousands of years of alienation and revolution have not been able to root it out."[73] Levi Eshkol, as prime minister of Israel in the 1960s, would say that "Israel in dispersion maintained its spiritual and material links with this country." This "historical and spiritual right" has been "confirmed by international law and forged on the anvil of reality." He found "no parallel in the annals of the nations to this unique bond between our people and its land."[74] Judge Moshe Silberg of the Supreme Court of Israel would state that "our spiritual presence in this land was far more intensive than the physical presence" of those who inhabited

it. "We prayed in exile for the dew and the rain," he said, "not in the rainy seasons of Poland and the Ukraine but in the rainy season of the land of Israel."[75]

Ben-Gurion argued that though Jews were absent from Palestine they made "incessant efforts" to return.[76] But British historian Hugh Trevor-Roper disputed Ben-Gurion's interpretation. The Jews were not "constantly prepared for a return to the Holy Land," he wrote, nor was Zionism "the end to which all creation, in those two thousand years, had been groaning and travailing." The Jews "might suffer terrible persecutions and pogroms in Russia or Poland," but "somehow when they left, with the Holy Land on their lips, their feet carried them" to "Germany or England or America."[77]

Prior to the nineteenth century few Jews migrated to Palestine,[78] though there was no prohibition on migration after the Arab conquest in the seventh century. The Ottoman Empire did not prohibit Jewish immigration, but European Jews who migrated to the Ottoman Empire typically went to Constantinople, Damascus, or Cairo, where economic opportunities were greater than in Palestine.[79] The fact of psychological attachment to a territory does not yield territorial rights; and the criteria of occupation and dominion used in international law require a more concrete connection.

9

Arab vs. Zionist: War of Independence or War of Aggression?

And those who, when
An Oppressive wrong is inflicted
On them, (are not cowed
But) help and defend themselves.
—*Holy Quran*, xlii, 39

To bolster its territorial claim, the Zionist movement downplayed the size and longevity of the Arabs' residence in Palestine. This was expressed in a phrase that became popular that the movement sought "a land without people for a people without land."[1] But the Arab population had been stable for hundreds of years. There was no substantial in-migration in the nineteenth century.

The Jewish Agency argued that the Palestine Arabs did not constitute an ethnic group separate from other Arabs and, therefore, had no self-determination right and in particular no right to Palestine.[2] The Agency pointed out that in the early twentieth century Palestine Arabs did not seek independence for Palestine but for a single Arab state or for a Syrian state of which they would form a part. Thus, it depicted the idea of a separate Palestine as artificial, invented to defeat Zionist claims.[3] Golda Meir, as prime minister of Israel, declared that "there is no such thing as Palestinians." She said, "it was not as though there was a Palestinian people in Palestine considering itself as a Palestinian people and we came and threw them out and took their country away from them. They . . . did not exist."[4] By this, Meir meant that Palestine Arabs did not consider themselves different from the Arabs of neighboring areas.

To be sure, the Palestine Arabs did, in the early twentieth century, seek a single Arab state and later an affiliation with Syria. While Turkey ruled, many Arabs sought the establishment of a single Arab

state. Syria was a dominant force in Arab nationalism, and affiliation with Syria appealed to many Palestine Arabs.[5] Syria also seemed to have the strength to defend the Palestine Arabs against Zionism.[6] That orientation, however, "did not mean that they regarded themselves as Syrians."[7] Though Palestine had not been administered by Turkey as a single unit, Palestine had its identity from ancient times and was considered as a territorial unit into modern times by its inhabitants—and by Europeans—who referred to it either as Palestine or as the Holy Land.[8] When France and Britain divided the Arab territories into the mandates of Syria, Lebanon, Iraq, Palestine, and Transjordan after World War I, pan-Arabism gave way in Palestine to the espousal of independence for Palestine alone.[9] Arabs came to identify themselves as Syrian Arab, Iraqi Arab, or Palestinian Arab.[10]

The issue of Palestinian distinctiveness is not relevant, however, to claims to Palestine. The basis for a claim to territory is longtime occupation. For this purpose it does not matter whether the Palestine Arabs are distinct from neighboring peoples. The fact that they may have constituted part of a larger nation cannot be used to defeat their right to their territory.

Another argument made by some scholars in opposition to a right of self-determination for the Palestine Arabs was that to recognize their right would involve denying self-determination to the Jews. Arab self-determination "should not be applied to the territorial area of Israel," argued Michael Reisman, "for it would involve a comparable deprivation of the Israelis who themselves have their own historical trauma and have established a state for reasons which are well known."[11] The solution, say scholars like Julius Stone, is for Jordan to be the Palestinian Arab State.[12] These views overlook the Palestine Arabs' strong claim based on occupation and dominion and the correspondingly weak claim of the Zionists on these grounds.

If the Jewish Agency did not have a right based on history—and if the United Nations conferred no rights upon it—and if the indigenous population of Palestine (predominantly Arab) had a right to self-determination, then the Jewish Agency's right to use force to take control of Palestine is in doubt. As the Arab Higher Committee viewed the matter, "the people of Palestine" were "an independent nation." It said that the "majority of the population of Palestine, the 1,300,000 Arabs," considered that "the Jewish minority—whether

the 300,000 Palestinian citizens or the 400,000 foreigners—is a rebellious minority which has revolted against the sovereignty of the majority of the population of the country." Thus, the committee thought "that any attempt to create any foreign government in Palestine" was "an act of rebellion."[13] This view was expressed in more colorful terms some years later by Mohammed Bedjaoui, an Arab jurist who would become a judge of the International Court of Justice. "Who is the aggressor? The intruder who, without right or title, has taken possession of another's house and cries foul play whenever an attempt is made to evict him?" Bedjaoui asked. "Or the rightful owner, who has been clamoring for his rights for nearly half a century and asks for nothing but the restitution of his property?"[14]

The Arab Higher Committee was not a state. But, like the Jewish Agency, it was recognized by the League of Nations as representing the interests of its community in Palestine. "Communities under mandate" were "subjects of international law" with "a patrimony distinct from that of the Mandatory State," the Institute of International Law said in 1931. They possessed "a national status," and they could acquire rights or be held to their obligations.[15] As the entity representing the majority population of Palestine, the Arab Higher Committee had a strong claim to be the bearer of sovereignty. And Palestine, as it emerged from the mandate upon Britain's renunciation, possessed many attributes of statehood. It had a border internationally recognized;[16] its inhabitants carried Palestinian citizenship;[17] it had a body of law deriving from Ottoman law enforced in its courts;[18] and it had been a party in its own name to treaties.[19]

The Jewish Agency could also be considered in itself to be an outside force. Thus, Cherif Bassiouni suggested by way of analogy that if "a hypothetical group of people" were to steal an atomic bomb and to try to drop it on a particular state, this would be an armed attack warranting self-defense within the meaning of Article 51 of the UN Charter.[20] This conclusion arguably follows from the fact that Article 51 permits self-defense "if an armed attack occurs" but does not specify that the attack must be carried out by a state.[21]

The view that an attack by a private group is an "armed attack" under the UN Charter has been challenged, however.[22] Aggression is generally considered to occur only when the attacking entity is a state.[23] If an attack by a private group on a state were deemed an attack by a state, then a state using force to defend itself would be

required to inform the UN Security Council, since Article 51 of the UN Charter requires a state using force in self-defense to report to the council. But there is little precedent for reporting to the council by a state repelling an attack by a private group.

Even if an attack by a private group is not an attack as defined by the UN Charter, it nonetheless may lawfully be opposed by force. A state has the right to defend itself from armed action by private groups, whether they originate in the state or enter from outside.[24] Thus, if the Arab Higher Committee were a territorial sovereign, it would have a right to use force against the Jewish Agency, which would have been asserting by armed force a right to sovereignty in the committee's territory.

The Jewish Agency's military action of 1947–48 has also been analyzed as the action of a state, on the ground that the Agency had public-law status with the League of Nations. Under this analysis, the Zionist forces were agents of that public-law body who took up arms against the majority population of Palestine. Their action, therefore, constituted an armed attack by a state warranting self-defense by the majority population.[25]

The Security Council's approach to the 1948 war lends support to this view, at least to the extent that the council seemed to consider the Jewish Agency a state for this purpose. On May 14, 1948, the Jewish Agency, anticipating Arab-state intervention, brought to the Security Council a complaint of aggression against the Arab League. The Security Council treated it as a state-to-state complaint. This approach, according to international law specialists Myres McDougal and Florentino Feliciano, suggested that a conflict involving a newly organized territorial body politic on the one side and established states on the other is treated like a conflict between established states.[26] While the council was acting in response to the hostilities between Israel and the Arab League, its approach suggests that the Jewish Agency should be deemed a public-law body even with regard to its hostilities with the Palestine Arabs.

It was also plausibly suggested that the Jewish Agency's imposition of statehood amounted to a forced colonization of Palestine. The Agency had been allowed to develop a Jewish settler population by Great Britain, and it then revolted against Britain. The UN Charter did not require administering states to divest themselves of their

colonies.[27] But, like the League of Nations Covenant, it barred new colonization. By outlawing aggression and requiring the promotion of self-determination, the charter prohibited the taking of a people's territory by force. In the post-charter era no state claimed a right to acquire new colonies. If the Jewish Agency had no right to statehood, the colonialist aspect of its venture was unmistakable.

"Left to themselves," wrote a contemporary observer of the 1948 situation, "the Arabs of Palestine would be impotent against the Jewish State."[28] When the Arab-state forces entered Palestine May 15, 1948, the Jewish Agency, now representing the provisional government of Israel, told the United Nations that the intervention constituted aggression.[29] But the UN Security Council made no determination on that score.[30] The United States submitted a draft resolution that would have characterized the intervention as a breach of the peace, but it was voted down.[31] The council merely asked "all Governments and authorities, without prejudice to the rights, claims or positions of the parties concerned, to abstain from any hostile military action in Palestine."[32] Without assigning fault, it found "that the situation in Palestine constitutes a threat to the peace" and called for a cease-fire.[33]

The Arab states characterized their intervention as a defense of the majority population of Palestine.[34] Egypt cited atrocities against the Palestine Arabs[35] and a need to stop "Zionist terrorist gangs who persisted in attacking the peaceful Arab inhabitants."[36] Transjordan had been "compelled to enter Palestine to protect unarmed Arabs against massacres."[37] The Arab Higher Committee had invited the League forces to "assist" the committee "in maintaining law and order."[38] The intervening states also stressed they were entering Palestine at the committee's request. Egypt "was asked by the abundantly expressed will of the people of Palestine to offer aid to the new State."[39] Syria stated that the Arab majority in Palestine, in requesting Arab-state intervention, was exercising its right of self-determination.[40] Saudi Arabia sent forces into Palestine "to help their brothers, the Palestinian Arabs, only after they have been requested to do so by the majority of the inhabitants of the country."[41]

Despite Israel's charge of aggression, it was not clear that the Arab League forces were invading the territory that Israel claimed, which was the territory designated for a Jewish state in Resolution 181. The chiefs of staff of the Arab armies had informed their govern-

ments that the Arab League did not have the necessary troop strength or aircraft to defeat the Zionist forces. Realizing that, League officials hoped a show of force might convince the major powers to act on behalf of the Palestine Arabs.[42] Egypt conducted some air raids over Tel Aviv,[43] but the Arab League forces did not launch a serious ground attack into the areas the General Assembly had suggested for a Jewish state.[44] Transjordan, in particular, aimed at taking the West Bank, leaving the rest of Palestine to the Jewish Agency.[45] Upon entering Palestine, Transjordan indicated it would try only to stop farther advances by Zionist forces into Arab-populated sectors.[46] King Abdullah ordered his forces not to enter the area designated for a Jewish state in Resolution 181.[47] Transjordan's forces were headed by British officers, and they were under instructions to resign if the king ordered attacks into the area designated for a Jewish state.[48] The only major battle between the Arab Legion and the Zionist forces occurred around Jerusalem, which, according to Resolution 181, was to be internationalized. When that occurred, Britain withdrew from the legion both its officers and its funding.[49]

If the aim of the Arab-state forces was to prevent further atrocities, its intervention might be justifiable as humanitarian intervention. There is a doctrine, on which Israel would rely in 1976 in sending troops into Uganda to rescue kidnapped Israelis, that permits troop intervention to save persons from imminent harm.[50] While that doctrine was and still is controversial in international law, the factual basis of a need to protect human life was strong. The Haganah, Irgun, and LEHI had already killed substantial numbers of Palestine Arab civilians, even with British troops in Palestine. The prospect was very real that with Britain out of Palestine they would kill civilians more freely.

While the Arab states limited themselves for the most part to the territory designated in Resolution 181 for an Arab state, they made no formal commitment to observe that limitation, and the Arab Higher Committee claimed jurisdiction over all of Palestine.[51] If the aim of the Arab League was to uphold the right of the Palestine Arabs to sovereignty in all of Palestine, then the legality of the intervention would depend on the rights to Palestine of its Arabs and Jews.

If the hostilities amounted to a domestic rebellion by the Jewish

Agency against the Arab Higher Committee as the lawful bearer of sovereignty in Palestine, the law in force at the time did not provide clear guidelines. There had been outside intervention in the civil wars in Russia (1918–19) and Spain (1936–38), despite international efforts to limit it.[52] The law of the period did not clearly prohibit intervention, particularly on the side of the lawful government.[53]

If the rebel group was aided by outside states, then the right of other states to aid the lawful government was stronger still.[54] The Jewish Agency's challenge to the Arab Higher Committee was, arguably, being aided morally by the states that proposed a Jewish state in part of Palestine through Resolution 181, and materially by states —like Czechoslovakia—that permitted arms to be sold to the Jewish Agency.

The Jewish Agency was even more clearly being aided by outside private elements—through financial contributions—and one leading scholar found this gave the Arab states a right to intervene. "The Jewish community in Palestine," wrote Michael Akehurst, "was being used by foreign interests to commit indirect aggression against Palestine. The Arab states were protecting Palestine against such subversion; it is generally agreed that one state may protect another against subversion, under the rule of collective self-defense." The subversion was outside aid to the Jewish Agency, according to Akehurst. "The Zionist victory was due in no small measure to the money, weapons and men which the Zionists received from overseas."

The aid, Akehurst continued, "came mainly from private individuals and private organisations rather than from governments." While "most instances of collective self-defense against subversion relate to subversion by foreign governments," a state, "should have as much right to defend another state against subversion from foreign private interests as it has to defend another state against subversion from foreign governments, particularly as private interests are often as powerful as governments." Akehurst cited the 1960 secession of Katanga Province in the Congo, in which "a number of states regarded the assistance allegedly given by western capitalists to the secessionary movement in Katanga as a form of subversion, and claimed a right to defend the Congo against such subversion."[55]

The Arab Higher Committee would have a right to request intervention only if it enjoyed the necessary status in Palestine to do so. It

has been objected that Palestine was not an independent state and the Arab Higher Committee was not a legitimate government authorized to seek foreign aid.[56] But Palestine possessed, as indicated, an international status as representative of a people enjoying a right to statehood. The Arab Higher Committee represented the Arab population of Palestine and, therefore, had a right to request assistance.[57]

Israel objected to the Arab Higher Committee's request to Transjordan on the ground that Transjordan did not recognize the Arab Higher Committee. In mid-May 1948 King Abdullah, arguing that a truncated Palestine state was not viable, stated that the Arab Higher Committee no longer represented the Palestine Arabs.[58] Abdullah's nonrecognition of the Arab Higher Committee did not impair its request for intervention, however. The other Arab League states recognized the Arab Higher Committee, and the committee had the right to issue the invitation, regardless of the king's view. The Arab Legion entered with consent of the Arab Higher Committee, which rendered their entry lawful even if King Abdullah was not responding to the committee's invitation.[59]

The request was also challenged on the ground that the Arab League had decided in September 1947 to intervene if necessary to prevent partition, prior to any invitation from the Arab Higher Committee. This decision, it was argued, showed the aggressive character of the invasion.[60] But, as indicated, the League's intentions were uncertain through late 1947 and early 1948. It did not make a definite decision to intervene until April 1948. In any event, the league never contemplated intervening without the consent of the Arab Higher Committee. On December 8, 1947, the League indicated that if it intervened, it would do so "with the full consent of Palestine Arabs."[61]

The Arab League states also justified their intervention as lawful action of a regional organization.[62] The UN Charter authorizes action against breaches of the peace by regional bodies, and the Arab League probably qualified as such a body. Article 6 of the pact of the League states that in case of "aggression or threat of aggression by a State against a member State," the League's council should "determine the necessary measures to repel this aggression."[63] This justification faced two problems, however, and the matter was never resolved by the Security Council. The first was that Article 6 required aggression by a state. It would thus be necessary to decide that Israel was a state. Since the Security Council was dealing with the dispute on

the assumption Israel was a state, this might not be too great an obstacle. A second problem was that Article 6 required the aggression be against a member state, and Palestine was not a member state. Had the Arab Higher Committee had an opportunity to form a state, it would have joined the league, but the fact remained it was not a member.

10

Exodus: The Departure of the Palestine Arabs

We did everything to encourage them to flee.
—Yigal Allon, Commander, Palmach

The concerns of the Arab League were not frivolous. "British withdrawal freed our hands," explained the Haganah's intelligence branch in an analysis of the events.[1] In Jerusalem on May 15, 1948, Haganah loudspeaker vans urged the Arab population to flee. "Take pity on your wives and children and get out of this bloodbath," they proclaimed. "Surrender to us with your arms. No harm will come to you. Or get out by the Jericho road, that is still open to you. If you stay, you invite disaster."[2] The Jericho road leads to Jordan. "The evacuation of Arab civilians had become a war aim," said Haganah officer Uri Avnery, who would later become a member of Israel's parliament (Knesset).[3]

On May 15–16 the Haganah shelled Acre, where thousands of Arabs from Haifa and elsewhere had taken refuge. Most residents of Acre had fled during the Haganah's encirclement of the city that began in late April, and as the city fell more of them fled.[4] The Arab Legion moved into Jerusalem, where it tried to take back territory captured by the Haganah, but its only success was in capturing the Jewish Quarter inside the walls of the Old City.[5] In June the Haganah reorganized itself as the Israel Defense Force (IDF), absorbing the Irgun and LEHI,[6] and consequently the IDF outnumbered the combined forces of Arab armies.[7] Arms and ammunition the Jewish Agency purchased in Czechoslovakia began to arrive.[8] Meir attributed the Haganah's success in this period to these purchases of "shells, machine guns, bullets—and even planes."[9]

The Arabs of Palestine were "ejected and forced to flee into Arab territory," wrote Edgar O'Ballance, an historian of the war. "Wher-

ever the Israeli troops advanced into Arab country, the Arab population was bulldozed out in front of them."[10] It "typically sufficed," recalled Avnery, "to fire a few shots in the direction of Arab villages to see the inhabitants, who had not fought for generations, take flight."[11] In the town of Beisan some of the Arab population remained after the Palmach's attack in May. In June the IDF drove these remaining Beisan residents to the Jordan River and forced them to cross.[12] In July the IDF captured the major adjoining towns of Ramleh and Lydda in central Palestine. By decision of Ben-Gurion, it sent loudspeaker vans to order the inhabitants to evacuate. The IDF forced 60,000 residents, nearly the entire population of the two towns, to march east to the town of Ramallah, which was under Jordanian control.[13] The Haganah fired mortars to encourage the Ramleh and Lydda inhabitants along the road.[14] It spared one small group of Lydda residents from the expulsion, the town's railroad employees, since it needed them to run the railroad.[15] But Israel's policy, wrote O'Ballance, "was now openly one of clearing out all the Arab civil population before them."[16]

On July 16 the Haganah's Seventh Brigade captured Nazareth with little fighting,[17] but strong Arab leadership there prevented panic flight when the town fell.[18] Ben Dunkelman, commander of the Seventh Brigade, met with Nazareth officials and concluded a written surrender document in which he agreed not to expel the population.[19] Ben-Gurion arrived in Nazareth and reportedly asked why the Arabs were still there.[20] Dunkelman said he received an order about that time from the IDF command to expel the Nazareth population. He refused and, as a result, was ordered to withdraw the Seventh Brigade from Nazareth, to be replaced by other forces that would carry out the expulsion.[21] But after replacing the Seventh Brigade, IDF command reconsidered the matter. Expulsion from such an important Christian site would attract attention in the West.[22] To avert negative reaction, the command decided not to expel the population.[23] It did, however, try to expel small groups of Nazarenes over the next few weeks.[24] The nonexpulsion of the Nazareth population has been cited to prove that the IDF did not precipitate the Arab exodus from Palestine.[25] But Nazareth was a special case. The IDF did push out nearly all the Arabs in the territory it was capturing.[26]

Around Jerusalem the IDF and Arab Legion fought during July, but neither side was able to improve its position.[27] In mid-July the

IDF attacked the village of Jaba, near Haifa, and expelled all 8,000 inhabitants, firing at fleeing civilians.[28] It repeated this scenario in many Galilean villages.[29] In the Galilean town of Saffuriya IDF airplanes dropped barrels filled with explosives, metal fragments, nails, and glass. The population fled in panic.[30] To prevent the inhabitants' return, the IDF blew up houses in this and many other Galilean villages.[31] Count Folke Bernadotte, the UN mediator, complained of the demolitions, which he said were done "without apparent military necessity."[32]

Israel's expulsion policy generated modest opposition from left-wing Zionists.[33] Aharon Cizling, a left-wing member of the provisional government, complained about the expulsions and the demolition of Arab houses, leading the cabinet to issue an order on July 6 that read: "Except in the course of actual fighting, it is forbidden to destroy, burn or demolish Arab towns and villages, or to expel Arab inhabitants from their villages, neighborhoods and towns, or uproot inhabitants from their homes without express permission of an order from the Minister of Defense, in each and every case."[34] Expulsion and demolition continued, however.[35]

In August the government formalized its policy of demolishing villages to make it impossible for expelled inhabitants to reclaim them.[36] To prevent return by the inhabitants, the IDF set land mines around abandoned villages.[37] It quickly brought in Jews to settle many of the abandoned areas.[38] Count Bernadotte asked the government to repatriate refugees, but it refused.[39] As one reason for its refusal the government denied expelling the Arabs in the first place. Foreign Minister Moshe Shertok told Bernadotte "the war brought in its wake a mass exodus, mostly spontaneous."[40] But Bernadotte persisted on the issue. Disagreeing with Shertok's analysis of the reason for the departure, he reported to the United Nations that the "exodus of Palestinian Arabs resulted from panic created by fighting in their communities, by rumours concerning real or alleged acts of terrorism, or expulsion."[41]

As the IDF forced Arabs out of towns and villages, reported the *Economist*, it "systematically stripped" them of their personal belongings.[42] Soldiers removed furniture and housewares from abandoned Arab homes and took off doors, windows, lintels, bricks, roof tiles, and floor tiles[43] in what one observer called an "orgy of looting."[44] Bernadotte reported "large-scale looting, pillaging, and plunder-

ing" of Arab-owned property by the IDF, and he said that compensation should be paid for what was taken.[45] On September 17 three members of LEHI assassinated Bernadotte in Jerusalem, apparently because of his concern for the rights of the Arabs. LEHI leader Itzhak Shamir, according to several of the assassins, authorized the assassination.[46]

In October 1948 the IDF attacked more Galilean villages, typically taking them without resistance. In the village of Elabun it gathered the inhabitants and shot and killed thirteen young men.[47] It then expelled the rest of the residents, except for a small number of elderly and the village's Greek Orthodox residents. "The priests," an Israeli police report explained, "complained bitterly about the expulsion of the villagers and demanded their return."[48] In the village of Safsaf the IDF ordered the population to line up, then blindfolded seventy adult males and shot them to death. The other villagers fled.[49] In the village of Hula, just north of the Lebanon-Palestine border, Zionist forces confined seventy males in a building and killed them with submachine guns.[50] The IDF forced out the population of the villages of Ikrit and Biram,[51] and in the village of Gish IDF soldiers took valuables from the villagers. When the villagers demanded receipts, the soldiers took several of them outside the village to be shot and killed them.[52] UN observers in the Galilee reported these killings and expulsions, despite efforts by the IDF to keep them from investigating.[53] The Red Cross reported that, in villages whose population was not expelled, able-bodied men were put into hastily organized prison work camps.[54]

In October 1948 the IDF also conquered the Negev desert. It forced out most of the Arabs by destroying villages and killing inhabitants.[55] On October 22 it captured Beersheeba, the major town in the Negev, from the Egyptian army and expelled the town's population.[56] In the major coastal town of Majdal much of the population fled as the IDF approached.[57] On October 28 an IDF unit composed of former LEHI members captured the village of Dawaymeh, near Hebron. No fighting had occurred in Dawaymeh but soldiers said later they believed the villagers were responsible for killing one hundred Jews the previous year at a nearby settlement.[58] The unit killed several hundred civilians in Dawaymeh,[59] including seventy-five elderly men in a mosque. According to witnesses, Israeli soldiers beat women and children to death with sticks and blew up houses with people inside.[60]

Some Arabs forced out of their localities fled beyond the borders

of Palestine, while others fled to the Gaza Strip or east central Palestine, which would later be known as the West Bank of the Jordan River. Some fled to other locations in the area controlled by the IDF. A report from Haifa by an Israeli intelligence officer gave figures for the so-called "internal refugees" in six northern villages.[61] The internal refugees had no homes in the localities where they took refuge and no source of income.[62]

UN mediator Count Folke Bernadotte reported shortly before his assassination that "almost the whole of the Arab population fled or was expelled from the area under Jewish occupation."[63] Of the major Arab towns of Palestine that it captured, the IDF depopulated nearly all of them, with the exception of Nazareth. Figures on populations before and after the expulsion are: Jaffa 70,000 to 3,600; Haifa 70,000 to 2,900; Jerusalem 70,000 to 3,500; Lydda-Ramleh 34,920 to 2,000; Acre 15,000 to 3,500; Tiberias 5,300 to virtually none; Safad 9,530 to virtually none;[64] Beisan 5,180 to virtually none;[65] and Beersheeba 6,500 to virtually none.[66] The Arab urban population on December 31, 1948, according to an Israeli government count, was only 36,814.[67]

The IDF also virtually depopulated the rural areas.[68] An IDF report of October 1948 on the Galilee recited: "In all the villages where we fought the population has already fled, but many more will still flee." A government report said that 600,000 had fled.[69] It is estimated that in the area Israel took in 1948 there had been 900,000 Arabs in 1947. Of these, only 120,000 remained, according to the first Israeli census. Of these 120,000, half were Bedouins in the Negev, living in sparsely populated areas where there was no heavy fighting. That means that in the densely populated areas only 60,000 Arabs remained out of 840,000.[70] And of these, 20,000–30,000 were internal refugees.[71] So of 840,000 Arabs in the densely populated areas, very few remained where they had formerly lived. To the Arabs, wrote a student of colonialism, Zionism had become "a prolonged and tragically successful invasion" conducted by "an alien people under Western imperialist auspices, ending in the expulsion of most of the people whose country it was."[72]

11

To Justify a State:

Israel as a Fact

I have found you an argument; I am not obliged to find you an understanding.
—Samuel Johnson, June 1784, in James Boswell, *Life of Samuel Johnson*

In the fall of 1948 Israel's provisional government prepared to invade the West Bank.[1] Militarily, Israel had the capacity to take the West Bank from Abdullah's Arab Legion,[2] but a West Bank invasion held political risks. If Israel took the West Bank and did not expel its population, the Jews would be a minority in their new state.[3] So the invasion plan proceeded on the assumption the IDF would force out the West Bank population. A West Bank invasion-expulsion would, however, greatly intensify the Arab refugee problem, over which Israel was already under pressure at the United Nations.[4] Israel had maintained good standing at the United Nations, despite the expulsions, but a West Bank invasion might jeopardize its application for UN membership.[5] Britain, it feared, might intervene on Transjordan's side.[6] Weighing these concerns, the provisional government canceled the invasion.

On November 29 the provisional government applied for UN membership.[7] Under the UN Charter a state is admitted to membership by an affirmative vote in both the Security Council and the General Assembly. The Security Council took up Israel's application on December 17. In the council discussion Britain voiced concern that Israel had not responded to the UN request for an explanation of the assassination of its mediator, Count Bernadotte. Britain also said that before it could support Israeli membership it needed clarification of Israel's position on the internationalization of Jerusalem and on repatriation of the Arab refugees. Israel's application was put to a vote and was rejected.[8]

On December 11 the UN General Assembly established a concilia-

tion commission to urge the parties "to achieve a final settlement." At the same time it asked Israel to repatriate the refugees. It said that "the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practical date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."[9] But the provisional government refused repatriation, declaring that it was not responsible for the Arabs' flight. Ben-Gurion denied that Israel expelled any Arabs and said the departure of the Arabs had been organized by the Arab states or by Britain.[10] Ben-Gurion repeated that claim in later years, stating that the Zionist military had told Arabs to remain in place and the Arabs had "fled under orders of Arab leaders."[11]

In a few localities the Arab Higher Committee and Arab Legion did advise evacuation in the face of imminent attack.[12] But Ben-Gurion produced no evidence of any general departure orders to the Palestine Arabs from any Arab authority, and subsequent investigators found none.[13] Ben-Gurion did not mention the repeated appeals from Arab authorities for the Palestine Arabs to remain in place.[14] Legal scholar Nathan Feinberg, who supported Ben-Gurion's explanation, cited a statement attributed to Monsignor George Hakim, the Greek Orthodox Archbishop of Galilee: "The refugees had been confident that their absence from Palestine would not last long, that they would return within a few days—within a week or two. Their leaders had promised them that the Arab armies would crush the 'Zionist gangs' very quickly and there was no need for panic or fear for a long exile."[15] Feinberg said this statement acknowledged that the Palestine Arabs left because Arab authorities suggested it. Monsignor Hakim acknowledged the statement but said he did not mean that Arabs left in response to appeals. "At no time did I state that the flight of the refugees was due to the orders, explicit or implicit, of their leaders, military or political."[16]

In December 1948 the provisional government set a plan to conquer the Gaza Strip and Sinai Peninsula. It had the military capacity to accomplish this goal.[17] In late December the IDF made major gains against Egypt in the Sinai,[18] but Britain got word of the invasion and threatened to intervene.[19] The United States also threatened to with-

draw its support for Israel's membership in the United Nations and warned against any further IDF offensives.[20] Under that pressure Ben-Gurion withdrew the IDF from Egyptian territory and canceled plans to take Gaza and the Sinai.[21]

At the same time Ben-Gurion withdrew the IDF from southern Lebanon, where it had penetrated. The Litani River, an important water source, flowed through southern Lebanon. General Yigal Allon criticized Ben-Gurion's decision to withdraw, complaining that the IDF had been "on the crest of victory" from "the Litani in the north to the Sinai desert in the southwest. A few more days of fighting would have enabled us to liberate the entire country."[22]

In the spring of 1949 Israel concluded individual armistice agreements—though not peace treaties—with Egypt, Lebanon, Transjordan, and Syria.[23] Under the armistice lines drawn in these agreements, Israel retained the territory it had taken militarily with minor adjustments.[24] The most protracted negotiations were between Israel and Syria, ending in a settlement that included the creation of a demilitarized zone between them.[25] By the agreements Israel held 77 percent of Palestine—all sectors except the Gaza Strip and the West Bank of the Jordan River. The agreements specified that the armistice lines were not international borders and that their acceptance did not imply recognition of a right to any piece of territory.[26] The only exception was the Israel-Lebanon armistice, which implied recognition of what had been the border between Mandate Palestine and Mandate Lebanon by saying that "the Armistice Demarcation Line shall follow the international boundary between Lebanon and Palestine."[27]

In March Israel resubmitted to the Security Council its application for membership, and this time the council approved it.[28] The General Assembly then took up the application, but many members had the same concerns Britain had expressed in the Security Council. Some were concerned as well that Israel had claimed no borders; this raised the question of whether it might intend to take further territory. If it did, Israel might not meet the membership requirement in Article 4 of the charter that it be "a peace-loving state." The assembly's ad hoc political committee asked Israel to appear to address these matters.[29]

In a statement to the committee on May 5 Abba Eban, Israel's

representative, said that Jerusalem's status should be defined by international consent but that internationalization should apply only to the holy sites and that Israel might claim sovereignty over the "Jewish part" of the city. On the refugee question, Israel said the situation "was a direct consequence of the war launched by the Arab States" and, therefore, the matter should be solved by resettlement of the refugees in Arab states. It agreed to compensate Palestine Arabs whose property had been taken and promised to respect the property of the Palestine Arabs who remained in the territory it held. Israel regretted not having identified the assassins of Count Bernadotte but it would continue efforts to do so. On the question of borders, this should be determined by negotiation between it and the Arab states.[30]

Though some members expressed concerns over Israel's explanations, the General Assembly on May 11 approved Israel's application for membership, thereby admitting it to the United Nations. Its resolution approving the application noted its own Resolution 194 that called on Israel to repatriate the refugees and referred to the explanations given by Israel.[31]

In an attempt to work out a final settlement of the Palestine conflict, the conciliation commission got Israel, the Arab states, and the Arab Higher Committee to negotiate in Lausanne during May, but little came of the effort.

During 1948 few states had recognized Israel.[32] But in 1949 more did so. This recognition and the admission to UN membership led to a new argument for Israel's legitimacy. Even if there had been no lawful basis to establish Israel, its recognition became an argument for its legitimacy.[33]

It is not generally accepted, however, that recognition can legitimize a state that asserts sovereignty over territory to which it is not entitled. A "vice in title," wrote Ian Brownlie, cannot be "cured by recognition."[34] Daniel O'Connell stated that "a mere adding up of assents is of no greater juristic value than a particular assent, and since unanimous action is improbable, validation can never be international but can only be vis-à-vis the assenting states."[35] Thus, recognition confers no objective status.

Some scholars, like Quincy Wright, pointed to Israel's admission to the United Nations as a fact that constituted recognition by other states.[36] But admission to UN membership does not imply recogni-

tion by all member states or even by those voting for admission.[37] The UN Charter does not require a member state to recognize another member state.[38] Many states that do not recognize Israel are UN members.

Another theory that has been asserted to legitimize Israel is that Britain created a "legal vacuum" when it left Palestine.[39] Palestine became a "terra delicta"[40] or "terra nullius,"[41] in which Israel created itself through "auto-emancipation."[42] When in such a situation a community "asserts its independence," said O'Connell, it "acquires capacity if it has the qualifications for Statehood."[43] This sovereignty-vacuum theory relies on the concept in international law that sovereignty may be established by exerting control over unoccupied territory.

The sovereignty-vacuum theory as applied to Israel has been criticized as smacking of colonialism since it assumes the indigenous population had no rights.[44] Israel itself has never used this argument since it claimed a prior-existing right. Palestine was not open to occupation by whoever might take it in 1948.[45] An inhabited territory, said Brownlie, "cannot be regarded as *terra nullius* susceptible to appropriation by individual states in case of abandonment by the existing sovereign."[46] When mandate territory is abandoned, sovereignty is still located somewhere.[47] The International Court of Justice made this point in the case involving Spain's departure from its colony of Western Sahara. When Spain relinquished sovereignty, Western Sahara was not *terra nullius* since there was a people in occupation.[48]

A theory suggested by André Cocâtre-Zilgien is that Israel is the lawful successor to the Jewish Agency. After Britain's withdrawal, he wrote, the "only authority remaining in place" was, "in fact and even in law, the Israeli authority."[49] But while the Jewish Agency had the status of a public body, it represented only a minority of Palestine's population. Thus, it could not have been deemed the bearer of sovereignty in Palestine.

That theory is similar to another that has been posited to justify Israel's existence, namely, that Israel is legitimate because it exists in fact.[50] Reliance is placed on the legal maxim *uti possidetis*, which says that one owns what one possesses.[51] But the international com-

munity has not followed such a rule. Rhodesia maintained a factual existence as an independent state 1965–80 but was deemed illegitimate since its government denied self-determination to a segment of the population.[52] Title to territory can be established by long-standing possession, a doctrine known as acquisitive prescription. But the possession must be peaceful and unchallenged. It does not apply "where possession has been maintained by force in the face of persistent and violent opposition."[53] A U.S. claim of acquisitive prescription to the Chamizal tract, long in dispute between it and Mexico, was denied by an arbitration panel because the possession had not been "undisturbed, uninterrupted, and unchallenged." Mexico had "constantly challenged and questioned" U.S. control.[54] In the Palestine case the possession has been persistently challenged both by neighboring states and by the Palestine Arabs.

Israel's factual existence did not make clear the extent of its territory. While the Jewish Agency declared statehood within the borders proposed for a Jewish state in Resolution 181,[55] the provisional government of Israel asserted that the resolution's rejection by the Arab Higher Committee and the military intervention by the Arab states freed it of that limitation. When Transjordan cited the resolution in a discussion over borders in May 1949, Foreign Minister Shertok told Transjordan that Resolution 181 had no legal force since the resolution had assumed the two parties would voluntarily establish their states.[56] With respect to the territory it took outside that designated for a Jewish state in Resolution 181, Israel claimed it acted in self-defense against the Arab states and filled a "sovereignty vacuum" there.[57] That position is dubious, however, since Israel's claim to self-defense was weak.[58] And even acting in self-defense, a state does not have the right to territory it occupies while repelling the attack, since self-defense is justifiable only as self-protection.[59]

In October 1949 Israel told the United Nations that it "asserts its title to the territory over which its authority is actually recognized," by which it presumably meant the territory within the 1949 armistice lines. "Although some of the invading Arab armies still stand on the soil of Palestine," it stated, "Israel is not advancing any further territorial claims. But of the territory now constituting the State of Israel, there can be no cession."[60] This claim to the territory on Israel's side of the armistice lines is doubtful, however, since the armi-

stice agreements stated that the lines were not international borders.[61] Many specified that Israel's borders were undetermined.[62] For operational purposes, however, they regarded the territory on the Israeli side of the armistice lines as Israel's.[63]

States recognizing Israel did not recognize Israeli sovereignty over west Jerusalem.[64] They typically cited UN resolutions proposing an international status for Jerusalem.[65] In December 1949 the General Assembly recommended placing Jerusalem under a "permanent international regime," supervised by the Trusteeship Council.[66] But the Knesset soon declared west Jerusalem Israel's capital.[67] Few states located embassies there, however, and Tel Aviv remained the effective capital.[68]



Part Three

The Status of Arabs in Israel



12

The Real Conquest:

The Repopulation of Palestine

And he gathered them together into a place called in the Hebrew tongue Armageddon.—*Holy Bible,* Revelation 16:16

The armistice line was not well patrolled, and some Arab refugees returned clandestinely.[1] The government of Israel called them "infiltrators," and the Knesset passed a law against "infiltration."[2] The authorities reexpelled those it found, and in some cases these were substantial groups.[3] Internal refugees as well tried to return to their villages, and the IDF tried to stop them.[4] It expelled many internal refugees by trucking them to the armistice line and forcing them to cross.[5] In some cases it cited security considerations, particularly in expelling persons living near the armistice line, while in other cases it cited the need to make room for Jewish immigrants.[6]

Much of this expulsion was from the Galilee, the largest concentration of Arabs inside the armistice lines.[7] In February 1949 the IDF expelled 700 internal refugees from the Galilee town of Kfar Yasif.[8] It also expelled half the inhabitants of Kfar Anan village,[9] the adult males of Gish village,[10] and the inhabitants of Hisam, Qatia, and Jauneh villages.[11] In August it expelled several thousand Arabs from Baqa el Gharbiya, a village in the Little Triangle area Transjordan had ceded to Israel in their armistice agreement.[12] In November it expelled 500 Arabs from Galilee and 150 Bedouin Arabs from the Beersheeba area.[13]

In August 1950 the IDF expelled the 14,000 remaining inhabitants of Majdal, who were the last substantial Arab population on Israel's southern coast. It trucked them to the Gaza border over a three-week period and forced them to cross. The government then renamed the town by its ancient name of Ashkelon[14] and moved Jewish immigrants into it.[15] The ministry of defense had decided

that removing the Arabs from Majdal and repopulating it with Jews would be "desirable from the security viewpoint."[16] In February 1951 the IDF forced the inhabitants of thirteen Arab villages in Wadi Ara (Little Triangle area) into the West Bank.[17] On November 17, 1951, it expelled the inhabitants of the village of Buwaishat, dynamiting their homes.[18] In 1951 the IDF also expelled large numbers of individual Arabs from the Galilee, typically forcing male heads of families or eldest sons to cross into the West Bank.[19] The IDF continued collective expulsions of villagers in the Galilee over the next two years.[20] In September 1953 the IDF expelled the residents and dynamited the houses of the villages of Um-el-Faraj[21] and Biram.[22] It also forced thousands of Bedouin Arabs in the Negev Desert beyond the armistice lines.[23]

The expulsion of Palestine's Arabs opened the possibility of creating a Jewish state. But still it was necessary to bring Jews there. In 1948 the government of Israel formulated plans to recruit several hundred thousand Jews from Europe and the Middle East.[24] The immigrants, editorialized the *Economist*, would "take the place of the outgoing Arabs."[25] Ben-Gurion said that immigration was intended to "save Jews from destruction."[26] But the government was concerned more about creating a Jewish-populated state and about its military potential.[27] The "real reason" for immigration drives, the U.S. ambassador, James G. McDonald, quoted Israeli officials as saying, was that Israel was "underpopulated and surrounded by actual and potential enemies." Israel "must be filled up as rapidly as possible."[28] It controlled "large conquered but unoccupied spaces from which the Arabs of Palestine had been evicted," and it feared "the Arabs would never forget and never forgive the wrongs done to them until justice was done."[29] Only an implantation of a Jewish population could protect the territory.[30] It would also make it less likely Israel could be pressured into permitting a return of the Arab refugees.[31]

Despite his statement about saving Jews, Ben-Gurion voiced a security rationale for immigration. "We have conquered territories, but without settlements they have no decisive value. Settlement . . . is the real conquest."[32] Israel needed "mass immigration in swift tempo." He said that "nothing is as forceful for security as intensifying immigration."[33] Without immigrants, he declared, Israel could

not "last for long."[34] The Soviet Union and its Eastern European allies freely permitted Jewish emigration for Israel from 1948 to 1950 to provide recruits for the IDF.[35]

Immigration also provided a justification for Jewish statehood. The "ingathering of the exiles" was the rationale for a Jewish state in Zionist ideology.[36] A state of "seven hundred thousand Jews," said Ben-Gurion, referring to the Jewish population in Palestine at the time, "cannot be the climax of a vigil kept unbroken through the generations and down the patient centuries." Even if "unperturbed by external dangers, so empty a State would be little justified, for it would not change the destiny of Jewry, or fulfill our historic covenant."[37]

The government hoped to bring in European Jews liberated from Nazi concentration camps.[38] The Zionist underground in Eastern Europe encouraged Jews to migrate to Palestine.[39] But when Britain's withdrawal in 1948 ended the limits on Jewish immigration to Palestine, no large influx resulted. Even though the Eastern European governments did not impede emigration, few Eastern European Jews went to Israel.[40] A study published in 1948 concluded that 80 percent of the displaced Jews wanted to emigrate to the United States.[41]

Ben-Gurion said that Israel had room for all of Eastern Europe's 3 million Jews.[42] The government made great efforts to encourage Jews in Eastern Europe to migrate to Israel. Its immigration agent in Romania reported in 1950: "Working through the local leadership and every reliable Jew we have met, we are urging the Jews to make applications for emigration and for passports."[43] Agents tried to get emigrating Jews to Israel. In Poland Israeli officials would "send the people directly to the port, so they would not be able to stop en route," reported Samuel Eliashiv, Israel's ambassador to Czechoslovakia.[44] Israel's consul in Warsaw, Israel Carmel, found that persuasion was difficult. "The awakening of the Jews of Poland will not happen by itself," he reported in 1949. "They must be motivated and organized."[45]

The government also recruited Jews from Arab states.[46] It sent agents to convince Jews to immigrate to Israel. There too it did not meet a ready reception. The Jewish Agency had operatives in Arab states during the early 1940s to encourage Jews to move to Palestine, but few had done so. Jews had, to be sure, occupied a subordinate status in the Arab world, though the situation varied from country to

country. Jews did not experience in the Arab world the enmity they found in Europe.[47] "For many centuries," according to Henry A. Byroade, assistant secretary of state for Near Eastern, South Asian, and African affairs of the U.S. Department of State, "Jews and Arabs lived side by side in the Middle East in relative harmony."[48] In some Arab countries, like Iraq, Jews occupied positions of wealth and political power that put them well above the average person. In Yemen, on the other hand, many Jews were quite poor.[49]

Mob attacks on Jewish quarters took place in several Arab countries in 1947 after the General Assembly vote on Resolution 181.[50] These were motivated by the perceived injustice of the Resolution. In Damascus mobs attacked not only Jewish quarters but institutions they perceived as responsible for Resolution 181, including the U.S. and French legations and the Syrian Communist Party headquarters.[51] In early 1948, as military confrontation became likely, Arab states grew suspicious of Jews who supported Zionism and restricted them in various ways.[52] The expulsion of Palestine Arabs in 1948 created resentment in the Arab world, particularly as the refugees went to Arab countries and recounted what had occurred to them. With the Jewish Agency purporting to be carrying out its policy in the name of world Jewry, some of this resentment was directed against the indigenous Jewish populations in the Arab states.[53] The Arab League issued a statement February 9, 1948, in which the member states agreed to suppress anti-Jewish activity in their countries.[54] But mob attacks against Jews took place, and governments undertook discriminatory administrative and legislative measures of various kinds. Still, the Jews of the Arab world did not flock to Israel. Zionism had made little headway there before 1948, and even after 1948 the reaction was mixed. Even those who approved of Zionism did not necessarily want to migrate to Israel. For most Arab-state Jews, migration to an unknown situation in a newly established country was riskier than staying where they were. Further, they heard stories of discrimination in Israel by European Jews against Arab-state Jews.

The recruiters, who were associated with the Israeli intelligence agency Mossad, were active in Arab states and encouraged Jews to immigrate to Israel. Both Arab and Western states expressed concern that Israel's recruiters artificially generated a desire for immigration to Israel. In Yemen, in 1949–50, Israeli agents organized the depar-

ture for Israel of almost all indigenous Jews. They told the Yemeni Jews, most of whom were deeply religious, that the third kingdom of Israel had arrived. En route to Israel, the Yemeni Jews reportedly sang (referring to Ben-Gurion) "David, David, king of Israel!"[55]

In Iraq most of the country's Jews migrated to Israel in 1950–51. Israel organized in Iraq an underground group called the Movement to promote migration of Iraqi Jews to Israel. To frighten Iraqi Jews into departing, the Movement set off a series of bombs in Baghdad, including one at a synagogue, killing a number of Jews in the process.[56] The Movement distributed leaflets urging Jews to flee to Israel.[57] Israel denied setting the bombs, for which two members of the underground were convicted by an Iraqi court. But after one such bombing, leaflets referring to it and urging Jews to leave for Israel were distributed within hours, suggesting they had been printed prior to the bombing.[58] Wilbur Crane Eveland, a U.S. Central Intelligence Agency officer who was in Baghdad at the time, concluded that the Movement had set the bombs, as did resident British officials.[59] While Israel denied responsibility for the bombings,[60] its role was later indirectly acknowledged after Israeli agents set bombs in Cairo, making it appear that the act had been done by Arabs. The defense minister said this tactic had first been tried in Iraq.[61]

The assistant secretary of state for Near Eastern, South Asian, and African affairs in the U.S. Department of State, George McGhee, criticized Israel for its Iraq operation. "It was one thing to take Jews from all over the world who were in distress," he said, "but it was another matter entirely to attempt to create circumstances which would stimulate immigration of Jews from areas where they were living in peace."[62] When Israel undertook a campaign to get Iranian Jews to immigrate to Israel, the director of the office of Near Eastern affairs in the U.S. Department of State, G. Lewis Jones, told Teddy Kollek, of Israel's embassy in Washington, that the United States "would not favor a deliberately generated exodus there," as he put it, "along the lines of the ingathering from Iraq." Kollek justified Israel's Iraq operation as beneficial for Iraq, stating it was "better for a country to be homogeneous."[63] In Yemen and Iraq, Israeli agents arranged transportation for the Jews to ensure their destination would be Israel. This was a major problem for Israel since, of Jews leaving Arab states at this period, many went to countries other than Israel.[64]

By 1951, 684,000 Jews entered Israel as immigrants, more than

doubling the previous Jewish population of Palestine. Half came from Europe, including 100,000 from displaced person camps in Germany, Austria, Italy, and Cyprus. The other half came from Arab countries, mainly Yemen, Iraq, Morocco, and Algeria.[65] The government of Israel portrayed the influx of Jews from Arab states as a product of persecution. "Parallel to the exodus of half a million Arabs from Israeli territory, 700,000 Jews fled Arab countries due to repression and persecution of all kinds, emigrating to Israel." It depicted it as "a kind of exchange of population."[66]

In 1952 the Knesset wrote the policy of promoting mass immigration into legislation: "The mission of gathering in the exiles, which is the central task of the State of Israel and the Zionist Movement in our days, requires constant efforts by the Jewish people in the Diaspora; the State of Israel, therefore, expects the cooperation of all Jews as individuals and groups, in building up the State and assisting the immigration to it of the masses of the people."[67]

In Morocco, Israeli agents went from house to house in poor Jewish quarters warning of anti-Semitism that would follow the anticipated independence of Morocco from France. There were, in fact, acts of violence against Jews during that period in Morocco. As in Iraq, a clandestine Zionist organization was established as an "underground railroad" for potential emigrants. Of Jews emigrating from Morocco at that time, the well-to-do predominantly chose Europe, while the less affluent predominantly chose Israel.[68] The Moroccan interior minister said that Moroccan Jews "were driven to Israel by the fear psychosis" spread by these agents.[69] About 30,000 emigrated to Israel. The repression in Morocco did not materialize, and in Israel these immigrants encountered discrimination from European Jews.[70] About 5,500 returned to Morocco.[71]

The government gave itself broad legal authority to govern the Arabs, whom Ben-Gurion called a "potential fifth column."[72] The Knesset adopted legislation putting into effect the Defense (Emergency) Regulations that Britain had enacted for Palestine in 1937.[73] The regulations gave the government the power to expel a person,[74] to detain a person indefinitely without trial,[75] to restrict a person's movement,[76] and to restrict travel into or out of any area declared closed.[77] They permitted the censoring and suppression of newspapers,[78] the banning of organizations,[79] and a broad ban on speech by making it an

offense to try to influence public opinion in a manner likely to prejudice public safety, or to possess written material of such content.[80] They also permitted curfews on towns and the demolition of houses inhabited by persons accused of offenses.[81]

The regulations were considered to be in force under a statute the Knesset adopted to retain in force all enactments Britain had used in Palestine. The statute read: "The law which existed in Palestine on 14th May, 1948 shall remain in force."[82] But just before its departure, the British government had repealed certain laws, including the Defense (Emergency) Regulations. On May 12, 1948, it issued an Order in Council that repealed "Orders in Council specified in the Schedule to this Order . . . to the extent specified in the second column of the Schedule." The schedule included the Palestine (Defence) Order in Council 1937 (the original enactment of the 1945 regulations), and the second column specifies "the whole Order." The May 12 Order in Council by its terms came into force at midnight May 13–14.[83] The British government later confirmed that the 1948 Order in Council repealed the regulations.[84] Thus, the regulations were not in force on May 14, 1948, and, therefore, were not covered by the statute preserving the British law in force.

The government of Israel understood that Britain had repealed the regulations. This is evident from its effort in 1949 to remedy the defect. In that year the Knesset adopted the Law and Administration Ordinance (Amendment) Law in which it construed Article 11 of the ordinance to exclude "unpublished laws"—which it defined as laws adopted between November 29, 1947, and May 15, 1948—which were not published in the *Palestine Gazette,* despite being a law of a category whose publication was "obligatory or customary."[85] The Order in Council repealing the regulations had not been published by May 15, 1948, and was, therefore, rendered of no effect by this amendment. Under British law, however, the Order in Council was effective to render the regulations void on May 14, 1948.[86]

The regulations were by their terms in force only during a government-declared emergency, so the Knesset authorized the government to declare an emergency in Israel[87]—which it did—and which it has continued in force ever since. Haim Cohn, as attorney general in 1950, proposed repeal of the regulations. He reported that other government officials "decided it was better to have this sort of regulation in a British law than in an Israeli one."[88] The government

used the Defense (Emergency) Regulations almost exclusively against Arabs.[89] In a 1959 report Israel's state controller criticized this selective application.[90] He said there was "something improper about this law, which was drafted with the intention of its being applicable to all the inhabitants of the country, whereas in fact it is only enforced against some of them."[91]

13

The Present Are Absent:

The Fate of the Arabs' Land

Enter not houses other than
Your own, until ye have
Asked permission and saluted
those in them.
—*Holy Quran,* xxiv, 27

The provisional government used the Arabs' land, dwellings, and possessions for its Jewish population, and primarily for recent immigrants. Ben-Gurion ordered that abandoned Arab housing be allocated to Jews.[1] By April 1949, he reported to the Knesset, the government had settled 150,000 Jews in Arab housing.[2] In Jerusalem the government gave the better Arab houses to government officials.[3] In Jaffa many Jewish immigrants occupied Arab housing before the government could organize the process.[4]

The government also took housing from Arabs who remained inside the armistice lines. In Haifa in July 1948 the IDF forced out Arab residents of the Carmel ridge area to make room for Jews.[5] It forced Arabs from their homes in Acre, into what became an Arab ghetto.[6] Many "internal refugees" tried to return to their homes. Their land, like that of the Arab "external refugees," was considered "absentee" property and was controlled by the custodian of absentee property, who rented it to Jews—the rent money going to the government.[7] Many internal refugees had no housing, living in tin shacks or burial caves.[8] As late as 1958, 20,000 internal refugees lived in makeshift housing near Arab towns.[9] Nazareth, which received many internal refugees in 1948, still had three refugee neighborhoods in substandard housing in the 1980s.[10]

The expelled inhabitants of Ikrit and Biram, two Galilean villages, sued in court for the right to return to their villages, whose

lands had been distributed to kibbutzim (Jewish agricultural collectives.[11] In 1951 the Ikrit villagers obtained a return order from the Supreme Court to the minister of defense.[12] The minister refused, and the IDF demolished Ikrit.[13] The Biram villagers also sued, but in 1953, while their case was pending, the IDF sent airplanes that bombed all of Biram's buildings, leveling the entire village. The kibbutzim kept the land.[14] Ben-Gurion explained that "these are not the only villagers living a long way from their home villages. We do not want to create a precedent for the repatriation of refugees."[15] The government had closed Ikrit and Biram under the 1949 Emergency Regulations Law.[16] In 1963 and again in 1972 it extended the closure order under the Defense (Emergency) Regulations.[17] In 1981 the Ikrit villagers again petitioned the Supreme Court; the court cited Ikrit's proximity to Lebanon and said that security considerations still warranted their exclusion.[18] The villagers continued unsuccessfully to petition the government,[19] and expelled residents of other villages did so as well, also with no success.[20]

The Defense (Emergency) Regulations provided a full set of regulations for martial law rule, and the government imposed martial law.[21] It did so by declaring Arab-populated sectors to be "closed areas" under Article 125 of the regulations.[22] It established three martial-law zones—the northern area (which encompassed the Galilee), the central area (which encompassed the so-called Little Triangle area), and the Beersheba area (Negev Desert).[23] About 85 percent of the Arabs inside the armistice lines inhabited these three zones.[24] The only substantial numbers of Arabs not included were those in predominantly Jewish urban areas.[25]

The military government instituted a nighttime curfew[26] and a permit requirement for travel.[27] The military government divided the Galilee into fifty-eight sectors for travel purposes. This meant, in effect, that any travel outside an Arab's home village required a permit.[28] To obtain a pass, an Arab applied to a military office, often waiting hours in a queue.[29] On the roads the IDF set up checkpoints and inspected Arabs for their passes. It fined or imprisoned Arabs found without a pass, or with an expired pass, or on a route different from that prescribed in the pass.[30] The military government required a permit not only for short-term travel but for a change of residence. An Arab who resided in a locality without permission might be

evicted, with confiscation of property. One observer, analogizing to South Africa, called the system one of "bantustans."[31]

Arabs had to carry identity papers, and soldiers on occasion forced large numbers of Arabs out of their houses for identity checks. Soldiers would typically gather a group of residents in an open field where they might keep them—men, women, and children—for a number of hours without food, drink, or toilet facilities.[32] The authorities frequently denied travel permits Arab farmers needed to take their produce to traditional market towns. This forced them to sell in their home village to Jewish merchants who could travel without a pass. The Arab farmer would receive only a fraction of the value of the produce.[33]

Arabs could not approach government ministries with grievances, as only military authorities had jurisdiction over them.[34] To challenge an order of the military government, Arabs had to go to a military court, as the civilian courts did not have jurisdiction to hear their petitions.[35] Avnery called thc martial law over Israel's Arabs "a colonial regime enforced by colonial law."[36]

The Jewish National Fund continued to purchase land from Arabs after 1948,[37] but these purchases lost their significance because the government began to confiscate large tracts.[38] The Knesset in 1949 enacted the Emergency Land Requisition (Regulation) Law, which authorized expropriation "for the defense of the State, public security, the maintenance of essential supplies or essential public services, the absorption of immigrants or the rehabilitation of ex-soldiers or war invalids."[39] Another 1949 law permitted the minister of agriculture to take control of "waste" (uncultivated) land.[40] The land of Arab refugees could be seized as "waste" land.

The Absentees' Property Law, adopted in 1950, permitted confiscation of the land of a person deemed an "absentee." It defined "absentee" to include any Palestinian who in 1948 left the land to go either to another state or to an area of Palestine held by Arab League forces.[41] The original draft of the Absentees' Property Law would have defined as absentees only those who remained outside the 1949 armistice lines, but as enacted it not only meant that absent external refugees but internal refugees and returning external refugees were deemed "absentees."[42] Forbidden to return to their homes even though they were living in Israel, they were referred to as "present absentees."[43]

The requirement of having left the land was construed to mean leaving for even a short period. As a result, land was confiscated from Arabs living on their land but who may have been absent for a few days during the fighting. The military government used Arab informants, of whom it cultivated a substantial number, to notify it what Arabs, though living on their land, might be deemed absentees, so their land could be confiscated.[44]

The Absentees' Property Law was implemented only against Arabs.[45] Because of the breadth of the definition of absentee, some Jews would have qualified, but the government did not invoke the law against them.[46] The government gave most of the land it confiscated as absentee to Jewish farmers. According to Mordechai Schattner, custodian of absentee property, between 1948 and 1953 the government established 370 new Jewish settlements, 350 of them on land it confiscated as "absentee."[47]

The custodian's office received complaints from absentees who "see their property in the hands of others and can't bear it." Some absentees offered exorbitant rents to lease back their own land. But the policy was to refuse them, for fear of difficulty in getting them to vacate. Thousands of Jewish settlers had occupied these lands.[48]

The Absentees' Property Law permitted confiscation but did not give the government title to the land seized. In 1953 the Knesset adopted the Land Acquisition (Validation of Acts and Compensation) Law,[49] which gave the government title to the land it had confiscated as "absentee."[50] Arabs protested the law, as it sought to bring finality to the land seizures.[51] It was condemned by the philosopher Martin Buber as bringing about a "robbery of the land" of Palestine's Arabs.[52] It provided for compensation, but most Arabs refused it, preferring to preserve their claim to the land.[53] The rate of compensation offered was sufficiently low that Prime Minister Moshe Sharett (formerly Moshe Shertok) called it "robbery."[54]

Article 125 of the Defense (Emergency) Regulations was also used to confiscate land. It permitted the closing of any area for security purposes and expulsion of its inhabitants.[55] The government closed substantial tracts under Article 125 and expelled their inhabitants. Once the Arabs were gone, the minister of agriculture confiscated the land as "uncultivated."[56] Shimon Peres, who later would be prime minister of Israel, said this use of Article 125 was not in fact security-related but was "a direct continuation of the struggle for Jewish settlement and Jewish immigration."[57]

The system of martial law, by restricting the Arabs' movement, helped the government take and control confiscated land. Ben-Gurion said "the military regime came into existence to protect the right of Jewish settlement in all parts of the state."[58] One consequence of the system of travel passes was that it kept Arabs from reoccupying their confiscated lands.[59]

The government typically confiscated valley lands, leaving Arabs with rocky hillsides.[60] It took major tracts in the Little Triangle area, which came under its control by cession from Transjordan in 1949.[61] The government confiscated water pumps in abandoned Arab orange groves and gave them to Jewish farmers.[62] Members of kibbutzim and moshavim in the Galilee took over flocks of cattle and sheep left by departing Arabs.[63] The government confiscated over 85 percent of the land of the Bedouin Palestinians of the Negev Desert[64] and concentrated the remaining Bedouins into small, largely uncultivable areas.[65] If an animal wandered off, a Bedouin might need a permit to look for it—a permit obtainable only by traveling to a military official a considerable distance away.[66]

Under a 1965 statute the government confiscated as absentee the extensive Moslem charitable lands (waqf), much of which was used for cultivation on a long-term basis.[67] This statute provided for the waqf land to be administered for charitable purposes by local boards of trustees appointed by the government.[68] It was not clear on what theory these lands were considered absentee since even though many of the farmers had departed, the authority owning them had not.[69]

All land was confiscated from those Palestine Arabs who were refugees beyond the 1949 armistice lines. Of the land belonging to Arabs who remained, 65 percent was confiscated by the mid-1950s.[70] The value of the land taken from the Palestine Arabs was estimated at 100 million Palestinian pounds.[71] It included stone quarries, 10,000 acres of vineyards, 25,000 acres of citrus groves, 10,000 business establishments, 95 percent of what became Israel's olive groves,[72] and 50,000 apartments.[73] Of 859,000 Arabs who had lived within the territory on Israel's side of the 1949 armistice lines, 684,000—by Toynbee's estimate—lost homes and property.[74]

The government of Israel emptied about 400 Arab towns and villages.[75] It demolished many of them and planted forests to eradicate traces of habitation.[76] Defense Minister Moshe Dayan, referring

to Zionist land acquisition both before and after 1948, said there was not a single settlement in Israel "which was not built on the site of a previous Arab settlement."[77]

The government continued in later years to confiscate Arab agricultural land on a piecemeal basis.[78] In the Negev the government confiscated the land of 8,000 farmers in 1980 to construct a military air base to replace evacuated airfields in the Sinai Peninsula.[79] Confiscations in the Galilee led to organized citizen protests.[80] The government also continued to purchase land, particularly in the Galilee.[81] According to a Jewish Agency report on the Galilee, the fact that the population there was 70 percent Arab posed "a major threat to the character of the area as part of the Jewish state, to Jewish control thereof, and even to Israeli sovereignty over it." The report called for more Jewish settlements as "mini-lookouts."[82]

14

Hewers of Wood:

Arab Commerce, Agriculture, and Labor

What are kingdoms but great robberies?
—St. Augustine*

In addition to their land, the Arabs of Palestine lost their economic infrastructure. The exodus of the Arab urban population in 1948 destroyed their commercial-industrial base.[1] The government took over fully equipped plants. In Ramleh it distributed 600 shops to Jewish immigrants. In Lydda it seized 1,800 truckloads of property, including a button factory, a carbonated drinks plant, a sausage factory, an ice plant, a textile plant, a macaroni factory, 7,000 retail shops, 500 workshops, and 1,000 warehouses. It confiscated cabinetmaking shops, locksmith works, turneries, ironworks, and tinworks, which it then leased or sold to Jews. Some of the Arab property was appropriated privately by what became a class of newly prosperous merchants and speculators.[2] The UN Palestine Conciliation Commission tried unsuccessfully to work out a monetary compensation system for Arabs whose property had been taken.[3]

The government sequestered as "enemy property" the bank accounts of expelled Arabs, saying it would release them only if the Arab states made peace with Israel.[4] Under a program worked out by the UN Palestine Conciliation Commission, it returned a small percentage of these funds in the late 1950s and early 1960s.[5]

The Arabs were left with a few small towns and villages. Only in the Galilee were towns and rural areas sufficiently contiguous to allow economic interchange.[6] In Nazareth, the largest Arab-populated city following the 1948 war, tile and match factories were no longer viable.[7] The modest industrial potential that remained was eroded by land confiscation. To found the Jewish town of Carmiel in the Galilee, the government confiscated quarries of high-quality marble

that had provided a livelihood for hundreds of persons.[8] The armistice line with Transjordan cut Arab manufacturers and merchants from their traditional connections in the territory that had become the West Bank. The Arabs became dependent on the Jewish economy for industrial and consumer products.[9]

The government promoted economic development for the Jewish sector but not for the Arab sector.[10] It used martial law powers to prevent the development of Arab industry. It denied Arabs permits to start businesses in areas closed to Arab habitation. The Israel Land Authority denied a permit to an Arab to open a marble quarry in Carmiel, on grounds that the area was closed to non-Jews.[11]

The government did not make available to Arab entrepreneurs the financial subsidies and loans it gave to Jews.[12] The ministry of the interior allocated to Arab towns only a fraction of the funding it allotted to Jewish towns.[13] Jewish towns received funds from Zionist agencies abroad, but the government did not permit outside funds to Arab towns.[14] Industry could not develop in Arab towns because the government did not fund sewage treatment, roads, or education.[15] The primary and secondary schools for Jews and Arabs, which were separate, showed "a marked disparity in quality," the U.S. Department of State said in a human rights report, because the government allocated greater resources per student into the Jewish system.[16]

Much industrial development was undertaken by the Histadrut, whose industrial arm, Koor Industries, Ltd., advertised itself as "Israel's largest industrial complex."[17] Koor, which accounted for one-fourth of Israel's industrial output, located no plants in Arab towns.[18] In 1985 it made plans for the first time to begin investment in Arab areas but did not carry them through.[19]

In the Encouragement of Capital Investments Law of 1959, the Knesset granted incentives for investment in areas designated by the ministers of finance and of industry and commerce as "development areas."[20] The two ministers designated forty Jewish-populated areas as development areas.[21] However, they did not give that designation to any Arab localities, even the most economically depressed.[22] The government used the development area designation in particular to provide a livelihood for Jewish immigrants and to place Jews along Israel's borders as a security measure.[23]

Through market and price controls, the government prevented the modest Arab agriculture that survived the land confiscations from competing with Jewish agriculture.[24] Government purchasing agencies paid more to Jewish farmers than to Arab farmers for similar products.[25] By statute the government marketing boards that set prices included representatives of the World Zionist Organization and Jewish Agency, which are dedicated to promoting the welfare of Jews.[26] Thus, the Knesset called for World Zionist Organization and Jewish Agency participation on the Peanut Production and Marketing Board,[27] the Vegetable Production and Marketing Board,[28] the Egg and Poultry Board,[29] and the Fruit Production and Marketing Board.[30]

A tobacco-purchasing agency (Alei Tabak) was established, owned jointly by the Jewish Agency, the Jewish National Fund, and the government. It was given a monopoly in tobacco purchasing and marketing[31] and bought tobacco from Jewish growers at a price higher than that at which Arab farmers could sell—a lower price set by the government.[32] The Agency[33] and Histadrut[34] provided financial assistance to kibbutzim or moshavim, but not to Arab farmers. Arab farmers were, and still are, excluded from membership in kibbutzim and moshavim.[35]

By the 1959 Water Law the Knesset declared all water in Israel "public property" and authorized the minister of agriculture to designate "rationing areas."[36] The minister's Water (Use of Water in Rationing Areas) Regulation of 1976 rationed water in the entire country.[37] The regulation gave Arabs only 2 percent of the water allotted for agriculture,[38] though they farmed 20 percent of the cultivated land, half of it in the arid Negev Desert.[39] The rationing system deprived Arab farmers of water they needed to compete with Jewish agriculture.[40]

The national water authority, Mekorot, manages Israel's water, a scarce and critical resource. Mekorot was founded in 1937 by the Jewish National Fund, the Jewish Agency, and a subsidiary company of the Histadrut, to supply water to Jewish settlements,[41] and under the Water Law it is owned jointly by the government and its three founders.[42] In the Water Law the Knesset also created a Water Board under the ministry of agriculture to oversee water use in agriculture and placed on the board a representative of the World Zionist Organization.[43] Mekorot did not supply to Arab agriculture even the

small amount to which it was entitled under the minister's regulations.[44] Control of water by the Zionist institutions has been called one of the "legal structures of apartheid."[45]

Arab labor experienced a radical transformation after 1948. Land confiscation deprived Arabs of the agriculture that had been their mainstay.[46] As a result, Arab farmers were forced into wage employment in the Jewish economy,[47] and so the government created labor exchanges to put Arabs into jobs.[48] A pattern developed of Arabs commuting from their home areas to jobs in Jewish areas.[49] Arab villages became bedroom communities.[50] The Arab village of Taibe, for example, had 4,900 inhabitants and 8,250 acres of land in 1949. By 1976 it had 15,000 inhabitants but only 4,750 acres of land, the decline resulting from confiscation. In 1949 one-half of the population was employed in agriculture—in 1976, only 10 percent. The displaced farmers worked in the Jewish sector in construction, agriculture, or food service.[51] Through land confiscations the Little Triangle, which had been a major agricultural area, became fully dependent on the Israeli economy.[52] The few remaining members of a pre-1948 Arab trade union, the Arab Workers Congress, tried to reorganize, but the government arrested its leadership, thus effectively suppressing it.[53]

Military authorities used the pass system to control the flow of labor into the Jewish economy.[54] In periods of unemployment in the Jewish economy the authorities withheld permits to protect Jewish jobs.[55] They initially issued permits valid for one day only, but as the need for Arab labor increased in the late 1950s they issued longer-term permits.[56] By the mid-1960s the government no longer feared Arab labor but rather needed it. As a result, it ended martial law in 1966.[57] It did so by issuing a general permit for citizens to enter and leave the "closed areas."[58] It did not, however, revoke the orders declaring the Arab areas "closed" and thereby maintained the legal structure for martial law. The Defense (Emergency) Regulations were retained.

While Israel's legislation treated Arabs as workers the same as Jews in many respects, the labor laws discriminated against them in several ways. Under the 1963 Severance Pay Law, the Knesset made workers employed for at least one year in the public or private sector eligible for severance pay if they were "dismissed" from their employment.[59] It deemed a worker who resigned voluntarily to take

up residence in an "agricultural settlement" or "development area" to have been "dismissed" and, therefore, to be entitled to severance pay.[60] The Severance Pay Law authorized the minister of labor to define "agricultural settlement" and "development area" for these purposes.[61]

By a 1964 regulation the minister of labor defined "development area" to include sixty Jewish-inhabited areas. He defined "agricultural settlement" to mean either a kibbutz or moshav (both Jewish-inhabited), or other settlement (*yishuv*), most of whose inhabitants are employed in agriculture.[62] Since most workers in Arab towns are employed in the Jewish sector this definition excludes Arab towns. The effect of the regulation was that only a Jew could resign to take up residence in one of the specified locations.

The Histadrut adopted a decision to admit Arabs in 1953 but did not implement the decision until 1959.[63] This exclusion limited an Arab's ability to gain employment.[64] In 1959 the Histadrut admitted Arabs as members—though it did not allow them to participate in Histadrut national elections until 1966[65]—but even so Arabs have not achieved a prominent role in the Histadrut.

The government permitted private employers to require IDF service as a prerequisite for employment, and some prospective employers required prior IDF service.[66] IDF itself excluded Arabs from many jobs on security grounds,[67] as did the Histadrut, a major employer. The Histadrut in one instance refused to hire Arab workers in a refrigerator plant because the plant was close to a factory producing military communications equipment.[68] Of 600 managers operating Histadrut firms, none to date is an Arab.[69]

Like government ministries, the Histadrut set up an "Arab affairs" department for its Arab members after it began admitting Arabs, but it then abolished this department in 1987.[70] In integrating Arabs into its general structure in 1987 the Histadrut established a division for organization and labor councils to administer trade union councils. It forbade Arab members to run for office on these councils, however, permitting them only to vote for Jewish candidates.[71]

15

The National Institutions: The Legislation that Makes Israel Jewish

Good laws lead to the making of better ones; bad ones bring about worse.
—Jean-Jacques Rousseau, *Social Contract*

The state the Jewish Agency created in Palestine mirrors the Zionist philosophy. Signers of the Declaration of the Establishment of the State of Israel identified themselves as "representatives of the Jewish Community of Eretz-Israel and of the Zionist Movement." The declaration called Israel a "Jewish State" and thus defined it as such.[1] Its mission was to be a state for world Jewry.[2]

The Knesset repeated this view of Israel in legislation. In a 1952 law it declared that "Israel regards itself" as "the creation of the entire Jewish people."[3] In a 1985 law it excluded from eligibility for Knesset membership any candidate who rejects "the existence of the State of Israel as the state of the Jewish people."[4] Also in 1985 the Knesset amended its rules for submission of legislation in order to prohibit the tabling of a bill that "negates the existence of the State of Israel as the state of the Jewish people."[5] The government has referred to Israel as having a "Zionist character,"[6] while the World Zionist Organization has called Israel the "supreme expression of the will of the Jewish nation for redemption."[7]

The Jewish character of Israel was reflected as well in state symbols. The 1949 Flag and Emblem Law used a Jewish symbol, the Star of David, in the state flag of Israel,[8] thereby reflecting the "identification between the new state and the Jewish people."[9] The Flag and Emblem Law used a Jewish candelabra, the menorah, as the state emblem.[10] The menorah, which appears in the Talmud, evoked the memory of the destruction of the second temple by the Roman emperor Titus in A.D. 70. Its use as Israel's emblem suggested "a return of the Jews to political existence as an independent nation."[11]

The national anthem adopted by the government was the Hatikvah, formerly the anthem of the Zionist movement.[12] Its words mention return to "Zion and Jerusalem."[13] The Knesset titled Israel's immigration law the Law of Return, suggesting that Israel is a state to which Jews are returning.[14] For Arabs, even those who are citizens of Israel, this legislation identifying Israel as Jewish indicates that they are not part of the constituency whom the state represents.[15] The concept of a Jewish state reflected in Israel's legislation made Arabs "aliens in their own land." They are not "wholly part of a nation conceived as a Jewish state."[16]

The Knesset early on rejected proposals for an explicit legislative provision that Jewish law would be applied in Israel.[17] In the state courts of Israel, judges use Jewish religious law in construing Israeli law.[18] By statute the Knesset required a judge "faced with a legal question" who "finds no answer to it in statute law or case-law or by analogy" to "decide it in the light of the principles of freedom, justice, equity and peace of Israel's heritage."[19] Since Israel is defined legislatively as a Jewish state, "Israel's heritage" means Jewish heritage, though there is disagreement whether this phrase refers to Jewish law only or to concepts emanating from Jewish history.[20] According to Supreme Court Justice Menachem Elon, "when Jewish law is cited in a civil court it has no religious import, but is simply a reflection of our national history and culture."[21]

While judges in Israel have made rulings that contradict Jewish law,[22] they have frequently referred to it, for example, in determining rules for the division of the property of a partnership[23] and in determining the validity of a deathbed will not properly witnessed.[24] The Supreme Court has cited the Talmud as a source of the principle of political tolerance.[25]

The Knesset uses Jewish law in formulating its statutes. Attorney General Haim Cohn said that in legislative drafting "special regard" is given to ancient Jewish law. "Whenever our experts find in Jewish law a provision which we can adapt to the needs of our modern and progressive country, we give it priority over the provisions of other law systems."[26] Referring to the declaration's definition of Israel as a Jewish state, Cohn said that legislators thereby "are told to look to the ancient prophets for their orientation."[27] The ministry of justice established a Jewish law department to advise Knesset commit-

tees on the approach of Jewish law to pending bills.[28] The drafters' commentary on the Succession Law of 1952 indicated that the drafters based their proposals "as far as possible upon Jewish Law, and in a number of matters—and among them the more basic, such as maintenance out of the estate—we regard our proposals as a kind of continuation of Jewish Law."[29] Describing a pending agency bill in 1964, Minister of Justice Dov Joseph said that drafters would find "inspiration" in the "rich legal sources of the Jewish people," and "so far as they find in these sources material appropriate for a modern statute book," they would "give it preference in language and content over other approaches less just or practical."[30] In Knesset debate over proposed laws members have frequently remarked over the correspondence of provisions to Jewish law.[31] The Chamber of Advocates Law called on the chamber, which controls the practice of law in Israel, to do research in Jewish law.[32] It did not mention any other body of law that the advocates should study.

In its legislation on rabbinical courts the Knesset gave them jurisdiction in marriage and divorce over all resident Jews, not only those Jews who adhere to Judaism. "Matters of marriage and divorce of Jews in Israel, being nationals or residents of the State," the law said, "shall be under the exclusive jurisdiction of rabbinical courts."[33] This provision subjected all Jews to religious authority, whether or not they ascribed to Judaism. During the mandate period, rabbinical courts had jurisdiction over religious Jews only.[34]

A primary mechanism to assure the Jewish character of Israel was the role given to the institutions that had built up the Jewish community in Palestine in the early twentieth century. The Knesset gave a key role in Israel's governmental scheme to the Zionist organizations, or "national institutions" as they are generally called.[35] After Israel was established, the World Zionist Organization/Jewish Agency continued to function as the political arm of the Zionist movement to mobilize Jewish support worldwide for Israel. "The Zionist Organization," said Ben-Gurion, "is able to achieve what is beyond the power and competence of the State, and that is the advantage of the Zionist Organization over the State."[36]

In its 1952 World Zionist Organization/Jewish Agency (Status) Law the Knesset declared the executive body of the World Zionist Organization, the Zionist Executive, to be a "juristic body" that "takes

care as before of immigration and directs absorption and settlement projects in the State."[37] The specifics of its relationship with the government are treated in a covenant between it and the government, called for by Article 7 of the Status Law.[38]

The Status Law made the Agency a partner of the government in the performance of many essential government services. For the state of Israel, the World Zionist Organization and Jewish Agency provide a valuable legal mechanism. They disseminate the kind of information normally disseminated by a government press office, but with the appearance of objective information. They enter into relations with other organizations in host countries and thereby create goodwill for Israel. They maintain contact with Jewish communities on behalf of Israel but on a nominally unofficial basis.[39]

The national institutions allowed Israel to establish a worldwide fund-raising apparatus under the guise of charity. In a number of countries this yielded important financial benefits. In the United States, where substantial sums were collected for Israel, persons making contributions were entitled to deduct these sums from their income for taxation purposes. This was allowed on the rationale that the purposes are charitable, whereas if contributions were made directly to the government of Israel no deduction would be allowed.[40]

The World Zionist Organization/Jewish Agency viewed itself as working for Israel. In a 1952 resolution it stated it operated "in the interests of the State of Israel within the Diaspora."[41] It described itself as "the representative of the Jewish people in all matters relating to organized participation of the Jews of the Diaspora in the development and upbuilding of the country."[42] Its functions included "organization of immigration, the transfer of immigrants and their property to Eretz Israel, . . . absorption of immigrants," "agricultural settlement," "acquisition and amelioration of land by the Jewish National Fund," and "development projects."[43]

In 1971 the World Zionist Organization/Jewish Agency split into two organizations. The Jewish Agency took responsibility for activities in Israel—rural settlement, immigrant absorption, youth training, and, later, urban rehabilitation. The World Zionist Organization (WZO) became responsible for Zionist political activity and the promotion of immigration to Israel from the West.[44] Policy for the two organizations is set by the World Zionist Congress.

Since the 1971 reorganization the Jewish Agency has been con-

trolled equally by Jews in and outside Israel.[45] The 1971 reorganization required amendment of the 1952 Status Law. The amendment states that the two bodies coordinate their activities with the government through a government-WZO committee and a government–Jewish Agency committee: "Two committees shall be set up for the coordination of activities between the Government and the World Zionist Organisation and the Jewish Agency for Israel."[46]

Until 1968 the two organizations alone were responsible for immigrant absorption, to the exclusion of the government. In that year the government established a ministry of immigrant absorption but the Jewish Agency—through its immigration and absorption department—works with the ministry,[47] handling the bulk of the task, administratively and financially.[48]

The Agency is given other functions in legislation adopted by the Knesset. The Agency nominates one member of the National Board for Planning and Building, which oversees construction work.[49] It nominates one member of the Committee for the Protection of Agricultural Land, which prevents encroachment on agricultural land.[50] As already indicated, it has, by statute, a role on governmental agricultural marketing boards and in operating Mekorot, the state water authority.[51] Participation on these bodies involves the Agency in decisionmaking for government agencies.

In 1977 the government announced an urban neighborhood improvement program called Project Renewal. It was to be undertaken jointly with the Agency, which was to raise the funds. Neighborhoods selected for renewal by the government and the Agency numbered about eighty and were all Jewish-inhabited.[52] One Arab neighborhood sought participation but was denied on the ground that its Arab majority precluded Agency funding. The majority of the funding for the project was contributed by the government rather than by the Agency, which meant that the Agency's restriction on funding directed the government's contribution to Jewish neighborhoods only.[53] In the late 1980s, however, some Project Renewal funds were used in Arab neighborhoods.[54]

Holding the Soil:

Arab Access to Land

Get off this estate.
What for?
Because it's mine.
Where did you get it?
From my father.
Where did he get it?
From his father.
And where did he get it?
He fought for it.
Well, I'll fight you for it.
—Carl Sandburg, *The People, Yes*

Like the World Zionist Organization/Jewish Agency, the Jewish National Fund continued to function after the establishment of Israel. It continued to purchase land under statutory authority.[1] The Fund remained a subordinate body of the World Zionist Organization and Jewish Agency.[2] To define the Fund's role in Israel, the Knesset adopted the Jewish National Fund Law. The law recognized the creation of a new Jewish National Fund, which had by that time been incorporated in Israel, "to continue the activities of the existing company, which was founded and incorporated in the Diaspora."[3] The new company held Fund land inside the 1949 armistice lines. The British-incorporated company continued to exist and to hold Fund land elsewhere.[4] The activities of the Israel-incorporated Fund were further defined in a 1961 "covenant" between the Fund and the government of Israel.[5] The Keren Hayesod (Foundation Fund) was also incorporated under Israeli law and was renamed "Keren Hayesod—United Israel Appeal."[6]

The Fund describes its role as using "charitable funds" in ways

"beneficial to persons of Jewish religion, race or origin."[7] Its leadership is appointed by the World Zionist Organization and its personnel are recruited from the Zionist movement.[8] While the Fund's principal function involved land, it assumed a major role in road-building, where it emphasized considerations of military strategy. In 1967 the Fund would claim credit for facilitating Israel's military victory over Jordan by building roads for use by tanks.[9]

The government owns 76 percent of the land within the 1949 armistice lines, while the Jewish National Fund owns 16 percent.[10] The U.S. Department of State cited this tenure system in a report on human rights in Israel, since it affects the right of Arabs to own and use land in Israel. "Title to 93 percent of the land in Israel is held by the State or quasi-public organizations in trust for the Jewish people," the department stated. "According to law, anyone may purchase the remaining seven percent of privately-owned land through ordinary commercial transactions."[11] Of the 7 percent, some is encumbered by deed clauses prohibiting sale to persons other than Jews,[12] but Arabs own most of that 7 percent, or about 5 percent of the land inside the armistice lines.[13] The government holds title to much of the Negev Desert, and the Fund holds 50 percent of the non-Negev land within the 1949 armistice lines, including most of Israel's prime agricultural land.[14]

Once the state or Fund acquires land, either is prohibited from alienating it.[15] By law, "the ownership of Israel lands, being the lands in Israel of the State, the Development Authority or the Keren Kayemet Le-Israel [Fund], shall not be transferred either by sale or in any other manner."[16] The Fund's charter also prohibits it from alienating land it owns.[17] Thus, land acquired by the state or Fund remains in perpetuity in the ownership of one or the other. In this way the law ensures the original Zionist goal of "redemption of the land."

Most of the land held by the Fund and government is land confiscated from the Palestine Arabs. As a result of this legal prohibition against land alienation, that land cannot be reacquired by them, even by purchase. As explained by Abraham Granovsky, for many years the chairman of the board of the Fund, "a great rule was laid down, which has a decisive and basic significance—that the property of absentees cannot be transferred in ownership to anyone but national public institutions alone, namely, either the State itself, or the original Land Institution of the Zionist Movement."[18]

The Fund uses its land to advance Zionist goals. It leases land for housing for Jews[19] and for kibbutzim, which accept only Jews as members.[20] The Fund's 1954 charter requires it to purchase land "for the purpose of settling Jews on such lands" and to "make donations" and to "promote the interests of the Jews."[21]

The Fund's charter omits the provision of its 1907 charter prohibiting the leasing of land to non-Jews.[22] The 1954 charter permits the Fund to lease "on such terms and in such manner as it may deem fit,"[23] but it specifies the Fund's objective as purchase of land "for the purpose of settling Jews."[24] The earlier proviso permitting leasing to Jews only was omitted because "the undesirable impression might be created of so-called racist restrictions," according to a Fund memorandum. "Even without these explicit prohibitions," the memorandum read, "the Fund Board of Directors will know how to administer the work of the institution in accordance with the explicit object as specified in the aforementioned clause which remains unchanged."[25] The Fund, however, as before 1954, leases to Jews only.[26] The Fund's standard lease contract requires a lessee "to carry out the work related to the cultivation of the Leasehold only and exclusively by Jews."[27] Arabs, therefore, are excluded from using or living on Fund land.[28]

Land owned by the Fund and by the state is administered by the Israel Lands Administration.[29] The administration's director is appointed by the government, after consultation with the Fund.[30] Policy for the administration is set by the Israel Lands Council, established in the same statute, and the government appoints the council.[31] Under the 1961 "covenant" between the government and the Fund, it appointed six Fund representatives and seven government representatives.[32] Only in rare cases has state land been leased to Arabs.[33]

The covenant gave the Fund the exclusive right and obligation for land reclamation and afforestation.[34] Accomplished by the Fund's Land Development Administration, this task includes land drainage, tree planting, and the opening of new border areas for settlement.[35] The Fund's regulations limiting the use of land to Jews are applicable to this state-owned land as well as to Fund-owned land.[36]

A 1973 Fund report indicated that the Knesset enacted the 1960 land legislation after securing the Fund's agreement to it. It stated that the legislation made the Fund's policies on land use into state policy: "Following an agreement between the Government of Israel

and the Keren Kayemeth Leisrael, the Knesset in 1960 enacted the Basic Law: Israel Lands which gives legal effect to the ancient tradition of ownership of the land in perpetuity by the Jewish people . . . the principle on which the Keren Kayemeth Leisrael was founded. The same law extended that principle to the bulk of Israel's State domains."[37] The Fund's power over state land means that its Zionist principles are government policy.[38]

Subleasing of Fund Land is also controlled. The Fund's charter provides that, once the Fund leases land, "no lessee shall be entitled to effect any sublease" without Fund approval.[39] Nevertheless, some lessees of Fund and state agricultural land sublet it to Arab farmers without approval.[40] To prevent that, the Knesset in 1967 enacted the Agricultural Settlement Law, which prohibited subleasing or sharecropping arrangements without the authorization of the minister of agriculture.[41] Avnery and an Arab Knesset member, Tawfiq Toubi, objected that the purpose was to prevent subleasing to Arabs.[42] Fund Director Shimon Ben-Shemesh confirmed Avnery and Toubi's suspicion by arguing in favor of the law precisely because, he said, it was necessary to keep Jewish lessees from subleasing Fund land to Arabs.[43]

As a sanction for unauthorized subleasing, the Agricultural Settlement Law called for the payment of a fine or for the forfeiture of lease rights.[44] Land has been confiscated when sublet to Arab farmers.[45] To ensure enforcement of the law, the director of the Galilee office of the Jewish Agency's Settlement Department sent a notice in 1975 to the settlements it had established. The notice warned that it is a violation of the law and of Settlement Department regulations to lease state or Fund land to Arabs as sharecroppers, or to rent orchards to Arabs for picking and marketing of fruit. The department mentioned in the notice that in 1974 it had pressed legal charges against Jews who violated these regulations.[46]

Since the Fund promotes land use by Jews over Arabs, it contributes to the segmentation of Israeli society.[47] This separationism in land use has been compared to land tenure in South Africa. There the sectors for blacks and whites are delineated and neither may purchase land in the area of the other. South Africa's Native Land Act of 1913 set aside 7 percent of the territory for the African population and prohibited them from acquiring land in the other 93 percent.[48] In 1936 the Native Trust and Land Act increased the land available

to Africans to 13 percent.[49] The South African law protects the 13 percent as African land, whereas Israel's legislation excludes the Arabs from Fund and state land but does not exclude Jews from the Arabs' land. In that respect, Israel's land tenure system is less favorable to the Arabs than is South Africa's to the Africans.

The governmental character of the national institutions is reflected in the fact that the Israel penal code deems an employee of the World Zionist Organization, the Jewish Agency, the Jewish National Fund, or the Keren Hayesod—United Israel Appeal as a "public servant"[50] in provisions on bribery, abuse of office, and impersonation or insult of a public servant.[51] Similarly, under the covenant between the Zionist Executive and the government, the national institutions enjoy immunity from taxation on the same basis as government agencies and have the power to issue administrative orders to carry out investigations.[52]

The fact that the Knesset has given the national institutions extensive governmental functions means that the Zionist doctrine is professed officially by the state.[53] The role of the national institutions results in national discrimination because, as stated by Hebrew University Professor David Kretzmer, "while entrusted with tasks which are *par excellence* tasks of a governmental nature, their mandate restricts them to dealing with the Jewish sector of the Israeli population."[54] A Fund official acknowledged that "the Government would have to look after all citizens if they owned the land; since the JNF [Jewish National Fund] owns the land, let's be frank, we can serve just the Jewish people."[55] Another Fund official suggested all state lands be transferred to the Fund so Arabs would not ask to use them.[56] The national institutions can discriminate in favor of Jews without the state itself being seen as discriminating.[57]

17

The Law of Ingathering:

Nationality and Citizenship

Integration is to be avoided.
—Abba Eban

Another area of Israeli legislation where differences between Jews and Arabs are found is nationality and citizenship. In the 1950 Law of Return the Knesset gave "every Jew" a "right to come to this country."[1] In the 1952 Nationality Law it conferred Israeli citizenship automatically on a Jew who settles in Israel and who does not reject it.[2] The Nationality Law does not refer to any nationality defined by the geographic borders of Israel.[3] This unrestricted right of immigration for Jews is deemed a basic aspect of the concept of a Jewish state.[4] Ben-Gurion said Israel "is not a Jewish State only because Jews constitute a majority, but a State for Jews wherever they are, and for every Jew who wants to be here." He characterized the Nationality Law as embodying "a central purpose of our state, the purpose of the ingathering of exiles."[5]

This philosophy drew criticism on the ground it was unfair to the Palestine Arabs. Henry Byroade, U.S. assistant secretary of state for Near Eastern, South Asian, and African affairs, criticized Israel in 1954 for regarding itself as a "headquarters" of "worldwide groupings of peoples of a particular religious faith who must have special rights within and obligations to the Israeli state."[6]

Which Jews Israel represents is not clear.[7] The signers of the Declaration of the Establishment of the State of Israel rejected a proposal to amend the term "Jewish state" to "sovereign independent Jewish state" because they did not want to imply that the state was independent of Jews outside Israel.[8] Thus, Israel purports to represent world Jewry. In 1971 the Knesset broadened citizenship rights for Jews by amending the Nationality Law to grant citizenship to any

Jew abroad who expressed a desire to settle in Israel.[9] Its intent was to grant citizenship to Soviet Jews who desired to settle in Israel.[10] Tawfiq Toubi criticized the amendment on the ground it separated citizenship from the territory of the state of Israel.[11]

Palestine Arabs displaced in 1948 have no right under Israeli law to return. The Nationality Law grants citizenship to a person who maintained continuous residence in Israel from May 14, 1948, to July 14, 1952, or who legally returned during that period if, in addition, the person registered as an inhabitant by March 1, 1952, under the 1949 Registration of Inhabitants Ordinance.[12] This provision was intended to apply to Palestine Arabs[13] but it excludes from citizenship Arabs who departed in 1948 unless they returned legally before July 14, 1952. The government, however, permitted only a few to legally return.

The rationale for this exclusion was that Palestine Arabs who departed in 1948 were disloyal. The legal advisor to the foreign ministry, using the government's version of the 1948 departure of Palestine's Arabs, said it was a sign of "disloyalty towards the State of Israel" to have "participated in the Arab exodus from Palestine organized by the Arab leaders in 1948."[14]

For Jews, proof of continuous residence from May 14, 1948, to July 14, 1952, was not required by the Nationality Law, since any Jew is automatically entitled to citizenship. In this way the law made a clear distinction between Jew and Arab widely viewed as discriminatory.[15] Of those Arabs who did not leave in 1948, many were unable to prove continuous residence from May 14, 1948, to July 14, 1952, and thus were refused citizenship.[16] A child born of such stateless parents was also stateless. In 1968 the Nationality Law was amended to grant citizenship to such a stateless child if the child applied between the ages of 18 and 21 and had not been convicted of a "security offense" or been sentenced to a term of five or more years' imprisonment after conviction on any offense.[17] In 1980 it was amended again to remove the restrictions of the original Nationality Law for those Arab residents of Israel and to grant them citizenship as of that time.[18]

Even with the 1968 and 1980 amendments, the law retains distinctions between Jew and Arab. The legal route for acquiring citizenship is still governed by different legislation, since a Jew acquires citizenship by virtue of being a Jew, regardless of place of residence.[19]

Further, the 1980 amendment grants citizenship only to those Arabs who were citizens of Palestine in 1948[20] and who have necessary documents to prove so.[21]

The United States characterized the Law of Return and Nationality Law as conferring "an advantage on Jews in matters of immigration and citizenship."[22] Others have said the two laws establish a "legal apartheid"[23] and have compared them to racial categorization in South Africa.[24] It has been argued in response that the two laws, while favoring Jews, do not discriminate against any particular nationality[25] and that it is not necessarily discriminatory to favor particular groups in granting citizenship.[26] Certain other states, it is pointed out, prefer members of ethnic groups in citizenship.[27] Human rights norms permit ethnic preference in citizenship, "provided that such provisions do not discriminate against any particular nationality."[28] These justifications are challenged on the basis that, while the two laws do not contain explicit discrimination against a particular nationality, the reality of their implementation in Israel is to discriminate against the indigenous population, the Palestine Arabs.

Jews are said to form a "nation"[29] because of a self-perception of commonality[30] and a perception by others.[31] Supreme Court Justice Moshe Silberg said that in view of "the exclusive status of the Jews in the world" and of "the fact that we are always so different from others," Jewry must be considered "as a people or nation."[32] It is objected by others that the link among Jews is religion, not "nationhood."[33] The government and Supreme Court of Israel both view Jewishness as something other than birth as a Jew, because they consider that a Jew who opts for a religion other than Judaism is not a Jew. For instance, a Jew who had converted to Catholicism applied for citizenship under the Law of Return. The ministry of the interior refused on the ground of his Catholicism,[34] and the Supreme Court upheld the refusal, Judge Silberg stating that "a Jew who has become a Christian is not deemed a Jew."[35] Judge Zvi Berenson quoted a statement made at the United Nations on behalf of the Jewish Agency by Moshe Sharett, later a prime minister of Israel. Sharett said that to be a Jew "it is essential that the person has not converted to another religion. He need not be an active, pious Jew. He is still considered a Jew. But if he converts to another religion he can no longer demand to be recognized as a Jew. The religious test is decisive."[36]

That conclusion was written into statute law in 1970. The Knesset amended the Law of Return to define a Jew as "a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion."[37] This definition was followed in 1977 to deny status as a Jew to a Jewish woman who converted to Christianity.[38] By using religious affiliation as a criterion, the Knesset suggests that Jewry is not a nation.

The United States has also taken the position that Jewry does not constitute a nation. It was explained—regarding a possible relation to Israel of Jews who are U.S. citizens—that the U.S. government "does not recognize a legal-political relationship based upon the religious identification of American citizens. . . . Accordingly, the Department of State does not regard the 'Jewish people' concept as a concept of international law."[39]

A second obstacle to Jewish nationhood is the fact that Jews do not inhabit a single territory but are nationals of many states.[40] Because of the nationality of Jews in various states, early Zionist diplomats used the term "Jewish people," rather than "Jewish nation," though they intended the "Jewish people" be considered a "nation" in the international law sense of a group having collective rights.[41]

Even though there is no "Jewish nation," it is possible there could be an "Israeli nation," made up of those Jews, or perhaps those Jews and Arabs, living in Israel. The government and courts of Israel have said, however, that there is no "Israeli nation." In 1972 a Jewish Israeli asked to change the "nationality" notation in his identity card from "Jewish" to "Israeli." Israel's identity cards call for nationality, and the designation used for Jewish Israelis is "Jew."[42] The interior ministry denied the request, and the applicant sued. The Supreme Court also denied the request, stating there is "no Israeli nation separate from the Jewish people. The Jewish people is composed not only of those residing in Israel but also of Diaspora Jewry."[43] Chief Judge Simon Agranat stated that the creation of an Israeli nation would negate the aspiration on which Israel was established. The court's decision reinforced the concept that Israel exists not for those within its territory but for persons wherever they are located who make up the "Jewish nation." That definition of Israel's constituency excludes Arabs, even if they are citizens of Israel.

The Jewish people Israel aspires to represent is primarily the European Jews who founded Zionism at the turn of the century. Israel

does not seek to assimilate into the Arab world but to maintain its separate identity.[44] Arab-state Jews are to be Europeanized to the farthest extent possible. Israel's onetime UN representative, Abba Eban, said that for Israel "integration" is "to be avoided." He evoked a "danger lest the predominance of immigrants of Oriental origin"—by which he meant Jews from Arab states—might "force Israel to equalize its cultural level with that of the neighboring world. So far from regarding our immigrants from Oriental countries as a bridge toward our integration with the Arabic speaking world, our object should be to infuse them with an Occidental spirit, rather than to allow them to draw us into an unnatural Orientalism."[45]

18

Divide and Conquer:

Arabs in Israel's Political System

I preferred "separate development."
—Yehoshua Palmon, Adviser on Arab affairs, government of Israel

Arab citizens of Israel have the right to vote and to be elected to the Knesset,[1] and many Arabs support an Arab-Jewish Communist party sharply critical of the government on important issues.[2] Arabs are regularly elected to the Knesset and participate actively in its debates. Arab Knesset members have only a limited ability, however, to influence policy on basic issues, like the repatriation of the Arab refugees. They cannot exert significant influence over the executive branch of government, whose functionaries are committed to Zionism. The government, the Jewish Agency, the Histadrut, and the army all promote a Zionist view. As a result, the ability of the Arabs to influence policy is limited.[3] Few Arabs serve in high bureaucratic posts. No Arab has been a cabinet minister. Of 1,839 leading government officials in 1980, only 16 were Arab. [4] Arabs are less able than Jews to develop with bureaucrats the relationship necessary to secure favorable action.[5] For Arabs the government is "alien";[6] each ministry has an "Arab affairs" department,[7] and Arabs approaching a ministry must contact it rather than the official who handles the issue in question.

As a result of the 1948 expulsion, the number of Arabs eligible to vote (17 percent of the electorate) cannot threaten Zionist policies in Israel.[8] And by keeping the Arabs economically dependent, the government prevented them from exercising political power even in proportion to their reduced numbers. Arabs have never held more than eight of the 120 seats in the Knesset.[9] The military government in Arab areas pressured Arabs to vote for Zionist parties[10] and in particular for the ruling Mapai party.[11] "Through the military government," said Teddy Kollek, who had been elected mayor of Jerusa-

lem, "Arab votes were secured."[12] The system of permits and closed zones resulted in a dependence of Arab citizens on the military government. That dependence extended to the Arabs' political activity. Mapai created lists of Arabs to run as Mapai candidates in general elections.[13] A 1959 Mapai internal memorandum titled "Recommendations for Dealing with the Arab Minority in Israel" explained the purpose of creating these lists was to ensure Arab politicians "would not consolidate into an independent Arab bloc."[14]

Military authorities threatened land confiscation or loss of work permits to Arabs who supported the Communist party.[15] A complaint to the UN Human Rights Commission in 1961 by a group called the Third Force Movement recited that the military governors "see to it that a worker who has expressed sympathy with the anti-Zionist party should get no permit to go to look for work, and he and his family should remain unemployed and hungry."[16]

Military authorities controlled elections to local office as well. In Arab towns they thwarted the election to municipal councils of Arab candidates viewed as hostile, and even of candidates of Zionist parties other than Mapai.[17] In some instances, when candidates it deemed hostile were elected, the military authorities dissolved the municipal council[18] and expelled the candidates from the country,[19] or cut allocations to the municipal budget.

The government's purpose in introducing elections in Arab municipalities was to prevent the development of unity under the traditional Arab leadership. The 1959 Mapai party memorandum claimed success in achieving this effort, which it referred to as its "communal policy." The "government's policy has sought to divide the Arab population into diverse communities and regions. . . . The municipal status of the Arab villages, and the competitive spirit of local elections, deepened the divisions inside the villages themselves. The communal policy and the clan divisions in the villages prevented Arab unity."[20]

Yehoshua Palmon, the government's advisor in the 1950s on Arab affairs, described in a 1983 interview how he had implemented the government's policy toward the Arabs. "I behaved toward them as a wolf in sheep's clothing—harsh, but outwardly decent," he said. "I opposed the integration of Arabs into Israeli society. I preferred separate development." Palmon understood "separate development" excluded Arabs from the political process. "True, this prevented the

Arabs from integrating into the Israeli democracy. Yet they had never had democracy before. Since they never had it, they never missed it. The separation made it possible to maintain a democratic regime within the Jewish population alone."[21]

Despite the pressure from the military government, some Arabs tried to form their own political parties, and when they did, the government blocked them.[22] It was "a principle of the military authorities not to tolerate nationalistic organising within the area under its control."[23] When nationalists organized meetings aimed at forming Arab political organizations, the military government stopped them.[24] It denied them travel permits,[25] put them under house arrest, or expelled them from the country.[26]

An Arab political organization was formed in the 1950s under the name Al-Ard (The Land). Concerned over its activity, the government confiscated its publications in 1960 and arrested its leaders.[27] In 1964, however, Al-Ard presented a list of candidates to stand election to the Knesset, under the name Arab Socialist List. The district commissioner of Haifa denied the group the right to form, on the ground "its aim was to undermine the existence and security of the State of Israel."[28]

The district commissioner acted under Articles 84 and 85 of the Defense (Emergency) Regulations, which permit the banning of "unlawful associations," groups found to be detrimental to state security.[29] The Supreme Court upheld the denial, Judge Alfred Witkon stating that Al-Ard's platform "expressly and totally negates the existence of the state of Israel in general and its existence within its present boundaries in particular."[30] Al-Ard did not call for the elimination of Israel, though it did advocate a Palestinian state.[31] It called for "recognition" of the UN General Assembly Resolution 181 which recommended partition of Palestine and would thereby "maintain the rights of both Israeli-Jewish and Palestinian Arab people and would strengthen the stability and peace of the area."[32] Following the Supreme Court decision, the minister of defense declared Al-Ard an "illegal association."[33]

In 1965 a group of ten Arabs sought to stand for the Knesset as the Arab Socialist List. Of the ten, five had been Al-Ard members.[34] The Central Elections Committee rejected the list as "an unlawful association, because its promoters deny the integrity of the State of Israel and its very existence."[35] The committee did not have evidence

of illegal acts done or threatened by the candidates.[36] The Supreme Court of Israel affirmed the Central Election Committee's rejection of the Arab Socialist List.[37] Judge Simon Agranat said the committee must protect "the continuity and perpetuity" of Israel as a "sovereign Jewish state."[38] Judge Yoel Sussman said the list's aim was the "destruction of the state."[39] Judge Haim Cohn dissented on the ground the election law did not authorize exclusion of candidates for their views.[40]

During the 1981 election campaign the government invoked the Defense (Emergency) Regulations to prohibit nationalist political congresses planned for the Arab towns of Nazareth and Shfar'am. These congresses had been called to form an Arab political party.[41] In 1984 the Central Elections Committee disqualified a list of Knesset candidates presented by an Arab-Jewish coalition, the Progressive List for Peace, which advocated a West Bank–Gaza state and negotiations between Israel and the Palestine Liberation Organization (PLO).[42] The candidates stood for election, however, after a favorable ruling from the Supreme Court.[43] The court found that the Progressive List for Peace, unlike the Arab Socialist List of 1965, did not seek to destroy Israel[44] and did not deny its right to exist.[45]

The Knesset in 1985 wrote the prohibition against Arab nationalist candidates into statute law by prohibiting participation in Knesset elections by candidates who reject "the existence of the State of Israel as the state of the Jewish people."[46] Avnery said the purpose was to "prevent Arabs from taking part in Israeli democracy."[47] Toubi said the law showed Israel to be an "apartheid state."[48]

The Arab population of Israel had loyalties to extended families, loyalties that divided them from each other. In addition, they were not all of the same religion. While most were Muslim, some belonged to the Druze sect of Islam, and others were Christian. The government of Israel was cognizant of these differences and their potential from its standpoint. "The government's policy," said the 1959 Mapai party memorandum, "has sought to divide the Arab population into diverse communities and regions." The "communal policy and the clan divisions in the villages prevented Arab unity."[49] The government sought "forced segmentation of the population (Druze, Christian villages, townsfolk)" through the co-optation of "positive elements."[50]

One aim of government activity was to foster discord between

Christian and Moslem Arabs.[51] It particularly cultivated the Druze Arabs, to split them from other Arabs.[52] The Druze are Arabs who formed a sect within Islam in the eleventh century.[53] They live in their own villages, making up 8 percent of the Arab population within the armistice lines.

The government gave the Druze Arabs preferences over other Arabs.[54] In 1948 it did not expel Druze Arabs to the same extent as other Arabs;[55] in fact, it managed to convince some Druze Arabs even to fight on the Zionist side.[56] Others of them cooperated with Zionist forces by convincing non-Druze Arabs to surrender.[57] The government put Druze Arab areas under martial law, as with other Arab areas, but it terminated martial law for them in 1962, four years earlier than for other Arab areas.[58] Even before it ended martial law, the government exempted Druze Arabs from the requirement of securing permits for travel.[59]

Though the conscription law of Israel contained no ethnic criteria, the minister of defense did not draft Arabs into the IDF, due to fears about their loyalty.[60] The IDF did not accept Arabs as volunteers, except for Bedouin Arabs.[61] In 1956, however, the minister began to draft Druze Arabs,[62] and when that occurred twelve hundred Druze Arab sheikhs protested. But the IDF successfully drafted Druze Arab soldiers and used them to oppose other Arabs—to drive Bedouin Arabs out of the Negev Desert to Jordan and to shoot Arab refugees attempting to reenter Israel clandestinely from Egypt.[63] The IDF service of Druze Arabs engendered confrontations with other Arabs during the 1956 war between Israel and Egypt, as the non-Druze Arabs viewed the role of the Druze Arabs as traitorous. As a result, fistfights between Druze and non-Druze Arabs were reported.[64] Some Druze Arabs refused to be drafted and have been prosecuted.[65] One fringe benefit of IDF service was that it made Druze Arabs eligible for many financial benefits the government gives on the basis of veteran status.[66] Druze Arab eligibility for these benefits created a further gulf between Druze and non-Druze Arabs.

Druze Arabs have benefited in other ways. The government gave larger budget allocations to Druze Arab villages than to other Arab towns,[67] though less than to Jewish towns.[68] The Histadrut admitted Druze Arabs into membership in 1957, two years before other Arabs,[69] thereby making it easier for them to get jobs.

The government also gave Druze Arabs a legal status separate

from other Arabs. In 1957 the ministry of religious affairs recognized the Druze as a religious community separate from other Moslems,[70] though they had not had separate status under Ottoman or mandate law[71] and had functioned as part of the Moslem religious community.[72] The major religious communities in Israel are governed by religious courts in domestic relations and matters of personal status.[73] In 1962 the Knesset established Druze religious courts separate from the Islamic courts.[74] It let the Druze Arabs have more qadis (religious judges) per capita than other Arabs.[75] One consequence of separate religious status was that a Druze Arab and a non-Druze Arab may not contract marriage in Israel, since all marriage is ecclesiastical, and religious authorities marry only persons of their own religion.[76]

The 1959 Mapai party memorandum claimed success in coopting the Druze Arabs. "The policy of communal division bore fruit," it stated. The policy "succeeded in creating barriers, albeit sometimes artificial ones, between certain parts of the Arab community, as in the case of the mistrust between the Druze and the other Arab communities. This policy enabled the state to prevent the formation of a unified Arab bloc and left considerable leeway for the leaders of the respective communities to concern themselves with their communal affairs, instead of general Arab ones."[77]

The government in 1970 changed the administrative structure for Druze Arabs. It directed government ministries to deal with Druze Arabs by ordinary channels rather than in the "Arab affairs" departments through which other Arabs are required to approach the government.[78] On the identity cards the government requires of all citizens nationality is noted, and for Druze Arabs the ministry of the interior uses "Druze" rather than "Arab," regardless of the preference of the individual Druze.[79] In 1977 the government removed Druze Arab schools from the jurisdiction of the education ministry's department that handles Arab schools.[80] In Druze Arab schools the government uses a special curriculum that teaches children about the differences between Druze and other Arabs in a way that promotes division.[81]

Despite granting them certain privileges, the government discriminated against Druze Arabs in many of the ways it discriminates against other Arabs. In the early 1950s it confiscated their lands to the same degree as it did those of other Arabs.[82] It does not permit

them to purchase housing in locations closed to Arabs.[83] Like other Arabs, Druze are excluded from employment in security-related jobs.[84] In 1987 the government declared an intent eventually to treat Druze Arabs equally with Jews in all respects;[85] but the reaction of the Druze Arabs to the favoritism policy was mixed. Many welcomed the benefits,[86] while recognizing the effort to separate them from other Arabs.[87] Although many Druze Arabs opposed the policy, it kept Druze and non-Druze Arabs from uniting as a political force.[88]

19

Protecting Privilege:

Arabs and Governmental Services

We has met the enemy, and it is us.
—Walt Kelly, *Pogo*

The government and the national institutions provide a variety of services to the population of Israel, and often the two collaborate to provide services. One important field of such collaboration is the creation of new residential settlements and the construction of housing.[1] The government plans and finances new settlements in coordination with the Jewish Agency, and, in conformity with its charter, the Agency organizes settlements for Jews only.[2] By 1968 the government and national institutions had built twenty-eight new towns for Jews in the Negev and Galilee areas,[3] primarily for immigrants.[4] The aim was to put "a large Jewish population" in areas where Jews were few.[5] "The history of immigrant housing," wrote Israel Shaham, assistant director-general of budget and finance in the ministry of housing, "is actually the history of public housing in Israel."[6] The government's housing policy has been aimed largely at establishing Jewish population concentrations. Conversely, it has put few resources into housing for Arabs.[7]

The Jewish National Fund, Jewish Agency, and Histadrut all build housing.[8] The ministry of housing built two major new towns in the Galilee—Upper Nazareth (adjoining the original Nazareth) and Carmiel. By its regulations the ministry refused to sell housing in these towns to Arabs,[9] unless they had served in the Israel Defense Force, police, or prison service.[10] As a result, few Arabs qualified.[11] The ministry of defense does not draft Arabs, except for Druze Arabs, and does not accept them as volunteers.[12]

Asked in the Knesset why the ministry refused to sell housing in Carmiel to Arabs, Minister of Housing Joseph Almogi replied that

Carmiel was not built for the people in the surrounding area.[13] Jewish purchasers may, however, lease or sell this housing to Arabs, since an Arab lessee or purchaser does not acquire rights in the land.[14] As a result, many Arabs have leased or purchased housing in upper Nazareth and Carmiel.[15] At other locations where it built housing, the ministry did not restrict ownership to Jews, but it has not built housing in Arab areas.[16]

In 1967 the government expanded the Jewish Quarter of the Old City of Jerusalem, evicting 650 Arab residents.[17] A government corporation, the Company for the Restoration and Development of the Jewish Quarter in the Old City of Jerusalem, Ltd., built new housing there. In a public offering the company stated it would sell to new immigrants who were residents of Israel, or to resident citizens of Israel who had served in the IDF or had received an exemption from IDF service, or had served in a Jewish organization prior to May 14, 1948.

Muhammed Bourkan, a former Arab resident of the Jewish Quarter, applied to purchase an apartment. Bourkan, like most East Jerusalem Arabs, was a citizen of Jordan. When the company refused to sell to Bourkan, he sued in the Israel Supreme Court, where the company acknowledged its policy of selling to Jews only. The court found no unlawful discrimination, reasoning that the expulsion and exclusion of Arab residents were justified by the expulsions in 1948 of Jewish residents of the Quarter by the Arab Legion.[18]

The government has tried through administrative measures to keep Arabs from moving into Jewish areas. Meir Shamir, director of the Israel Land Registration Office, told a meeting of the Government Committee to Evaluate Land Policy that "we have been operating according to governmental consensus on this issue all along. I am not authorised to tell you whether there is any such government decision written down anywhere. But these are guidelines we have received—not to encourage mixed peripheral areas."[19]

The government uses Jewish housing for strategic purposes. In the 1950s it created settlements in border areas, and after 1967 it built large apartment complexes in East Jerusalem in "a ring of Jewish settlement" around Arab areas,[20] to create "a Jewish-populated buffer zone between Arab Jerusalem and the West Bank."[21] It oriented sales to Jews, though it did not refuse Arabs. The Galilee has been a focus of attention for the national institutions and govern-

ment since it is the area of the greatest Arab population density inside the armistice lines.[22] In the 1980s the government and national institutions established new "lookout" settlements for Jews in the Galilee to increase the Jewish population there.[23]

The ministry of housing makes loans to the general public for the purchase of housing.[24] Two categories of people get preferential rates. Persons immigrating to Israel under the Law of Return are eligible to rent at a reduced rate and then to purchase the housing on preferential terms.[25] Zionist institutions abroad, like the Zionist Organization of Canada, make loans available at advantageous rates to persons immigrating under the Law of Return.[26]

By regulations of the ministry of housing if the loan applicant is a veteran, the loan is given for a larger percentage of the purchase price, part of the loan is interest-free, and the applicant is freed of a requirement that interest be adjusted for inflation.[27] The regulations define "veteran" as a person who holds a military identification number, or that person's parent, sibling, child, or spouse. Since no length of service is required, all persons who enter the military qualify. "Veteran" also includes any person who receives an individual exemption from military service. The ministry of defense issues individual exemptions only to persons subject to the draft, which means, with minor exceptions, only to Jews. The regulations also include as a veteran a person who was issued a military service postponement, which the ministry of defense typically gives to Orthodox Jews.[28] The definition of veteran thus includes nearly all Jews, regardless of whether they served in the IDF.

The ministry of housing gives preferential financing to certain applicants for the housing it builds in "development areas." These preferences are available by regulation to "a person who has served, or whose parent, sibling, or child has served in the IDF, police, or prison service."[29] Such persons are eligible for grants or loans to purchase the housing, or for rent subsidies in rental housing.[30] The broad definition—requiring no minimum military service and including the designated relatives—indicates that this benefit is not a reward for military service.

The government has continued the practice it started in the 1950s of giving Arab municipalities less budget funding than Jewish municipalities for roads, sewage, and other public services.[31] This under-

funding has exacerbated the housing situation of Arabs. Nazareth, an Arab-populated town, is an example. Gur-Arie, the prime minister's advisor on Arab affairs, said Arabs from Nazareth were moving into Upper Nazareth because of the poor housing in Nazareth. As the reason for what he called a "serious housing problem in Arab Nazareth," he said that "we are conducting a war against the Nazareth Municipality which is a part of the Communist Party [Rakah] and the standard of services there is very low. So those who can afford it obviously prefer to pay more than a Jew does and move to a place with better services."[32] Nazareth is an example of an Arab town receiving low budget allocations.

Discrepancies have appeared in the government's policy toward people who build houses in violation of regulations that require a building permit. Much housing is built in Israel without a permit, and the government frequently bulldozes houses built by Arabs without a permit.[33] It has not, however, typically bulldozed houses built by Jews without a permit,[34] even though, according to a study done at the Technion architecture and town planning faculty in Haifa, 75 percent of the houses built without a permit are built by Jews.[35]

Many individual Jews discriminate against Arabs in the sale or rental of housing. In one reported instance a Jew who signed a preliminary agreement to sell an apartment withdrew upon discovering the purchaser was Arab.[36] The government has adopted no legislation to prohibit private discrimination in housing and the courts have not found it illegal.[37] The chief rabbi of the Sephardic community, Mordechai Eliahu, whose position is established by statute,[38] ruled in 1985 that Jewish law forbids a Jew to sell or lease housing to an Arab in any area of Israel where Jews live or are preparing to live.[39] The chief rabbi of Acre, a town that includes Arabs and Jews, ruled that Jewish law forbids Jews to live in proximity to Arabs.[40]

Beyond housing, the government of Israel provides a number of welfare benefits to the public.[41] It places conditions on some of them, such as a recipient's having some relation to a person who has served in the Israel Defense Force. In a human rights report on Israel, the U.S. Department of State wrote that Arabs "do not qualify for many of the important economic and social benefits that derive from military service."[42] To encourage births, the ministry of labor and social welfare makes child support payments to parents, under the National

Insurance Law.[43] The 1949 Discharged Soldiers (Reinstatement in Employment) Law[44] was amended in 1970 to authorize the ministry, through the National Insurance Authority, to make an additional child support payment to "soldiers." The amendment defined "soldier" as "a person who is serving or has served in the Defence Army of Israel, the Police or the Prison Service," or who served in one of the Zionist military formations (Haganah, Irgun, or LEHI) prior to the establishment of Israel.[45] Avnery objected in the Knesset that the aim was not to reward for IDF service but to "encourage births among one part of the population of Israel and to effect the opposite among the other part."[46]

In 1970 the minister issued regulations under the amendment. He adopted the Regulations on Grants for Soldiers and Their Families, which provided grants for the third child and any additional children at a level approximately equal to the amount payable under the National Insurance Law.[47] Thus, a qualifying person receives double the ordinary amount.[48] The minister's 1970 Regulation broadened the 1970 amendment's definition of soldier to include the "spouse, children, or parents of a soldier."[49] Eligibility thus defined does not depend on actual military service.

The ministerial committee on the interior and services, acting without statutory authorization, provides this supplementary child support payment to parents who have not served in the IDF but are students in Jewish seminaries.[50] The result of the 1970 amendment, the 1977 Regulation, and the committee decision for seminarians was that nearly all Jews qualified for the additional payment, while almost no Arabs did.[51]

Universities in Israel are private. They are forbidden by government regulation to discriminate in the admission of students on the basis of "race, sex, religion, national origin, or social status."[52] But on security grounds, the universities do not admit Arab applicants to certain faculties.[53] Scholarships are given by the Office of Absorption of the Jewish Agency; Arabs are not eligible to compete for them, as they are available to persons immigrating under the Law of Return.[54] Certain privately funded scholarships are open only to students with IDF service.[55]

For higher education the government provides tuition loans and grants to "veterans," and to persons who reside in a "development

town" or "renewal neighborhood." Guidelines for distribution of these loans and grants were adopted by a commission appointed in 1982 by the minister of education and culture and chaired by Moshe Katzav, deputy minister of housing.[56] The commission defined "veteran" to include the parent or sibling of a person who served in the IDF. A student from a family of four or more children and who was eligible as a veteran for a supplemental allowance for a child was made eligible for a grant covering half tuition.[57]

With minor exceptions, "development towns" and "renewal neighborhoods" are inhabited by Jews only. The guidelines made a resident of either one eligible for a loan for one-third of university tuition. The loan was to be forgiven if the student resides in the development town or renewal neighborhood after graduation for a period equal to the period of study.[58] The criterion of development town or renewal neighborhood residence and the expansive definition of "veteran" made most Jews, but few Arabs, eligible for preferences in university tuition.

In 1987 the government decided to establish a dual tuition system—a lower rate for those who have served in the IDF, a substantially higher rate for others.[59] While in theory each university sets its own fees, the universities in fact set fees as decided upon by the government because of the substantial government subsidies they receive. The decision was criticized in the press as "apartheid policy."[60]

In elementary education the Knesset legislated in 1953 that the purpose of elementary education was to teach "the values of Jewish culture" and "loyalty to the State and the Jewish people." This purpose covered even "non-Jewish educational institutions," whose curriculum is prescribed by the minister of education.[61] The state funds an Orthodox Jewish private school system but does not fund schools for other religions.[62]

The Jewish Religious Services Budgets Law of 1949 and the Jewish Religious Services Law of 1971 called for local religious councils to submit budgets to the minister of religious affairs. The budgets are financed one-third by the central government and two-thirds by the local government.[63] There are no such statutes for other religions.[64] The Jewish religion thus was given preferential treatment.[65] The government allocates funds for Muslim and Christian religious services,

but at a level far less than their proportion in the population, and without a legislative mandate.[66] By statute, the Knesset gave legal status to the chief rabbinate and empowered and obligated it to undertake "activities aimed at bringing the public closer to the values of tora (religious learning) and mitzvot (religious duties)."[67] No other religion has a body with similar legal status, empowerment, or obligations.[68]

The ministry of absorption provides funds to immigrants and "returning residents."[69] Nearly all immigrants are Jews, as a result of the application of the Law of Return and the Nationality Law. Immigrants receive economic assistance for housing and job placement.[70] "Returning residents" are Israeli citizens who have resided abroad for at least two years. They are eligible for job placement assistance and for a loan for travel to Israel and for shipment of their personal effects. From 1969 to 1987, under a regulation of the ministry of absorption, only Jews were deemed "returning residents" to qualify for these benefits. In 1987 the attorney general ruled that this exclusion was discriminatory against Arabs.[71]

By the Specified Goods Tax and Luxury Tax Law, the Knesset authorized the minister of finance to designate classes of persons for favorable treatment when they bring goods into Israel after residence abroad.[72] Under this authorization, the minister issued the Purchase Tax Order (Exemption), which called for a lower import duty to be collected from a returning national than from a returning resident.[73] The order defined "returning national" to include only a person who, "if the person were not an Israeli national the Law of Return would apply to him."[74] Thus, only a Jewish citizen of Israel is a returning national.[75] An Arab citizen of Israel is a returning resident and pays higher customs duty.[76] By making eligibility under the Law of Return the criterion, the minister used an explicitly ethnic basis of distinction.

Some Are More Equal:

Ethnic Distinctions in the Law of Israel

Zionism is a form of racism.
—UN General Assembly

Even after it ended martial law rule in Arab-populated sectors in 1966, the government of Israel applied the Defense (Emergency) Regulations primarily against Arabs. It used the regulations to prosecute Arabs before military rather than civilian courts[1] and to subject individual Arabs to town arrest.[2] To prevent demonstrations against land confiscations in the Galilee in 1976, it issued notices that villages where demonstrations were planned were still "closed areas" under Regulation 125.[3] In 1979 the Knesset repealed two provisions of the regulations—those on deportation and administrative detention—but retained the power of administrative detention with certain safeguards for the detainee.[4] In 1982 the government invoked the regulations to ban planned publication of an Arab scientific periodical. The Supreme Court approved the ban, saying that under the regulations the government need not state its reason.[5] In 1986 the government used the regulations to prohibit an Arab cleric from traveling abroad for public speaking.[6]

Beyond the Defense (Emergency) Regulations, the Knesset adopted other legislation to suppress Arab nationalism. In 1980 the Knesset amended the Prevention of Terrorism Ordinance to prohibit "any act manifesting identification or sympathy with a terrorist organisation in a public place or in such manner that persons in a public place can see or hear such manifestation of identification or sympathy, either by flying a flag or displaying a symbol or slogan or by causing an anthem or slogan to be heard, or any other similar overt act clearly manifesting such identification or sympathy as aforesaid." That law empowered the government to declare an organiza-

tion to be terrorist.[7] It declared as terrorist the Palestine Liberation Organization (PLO) and thirteen other Palestinian organizations, including the component organizations of the PLO.[8] Under this law a court convicted two Arab students of producing a pamphlet supporting the PLO,[9] and Arabs have been arrested for flying a PLO flag.[10] The ministry of justice filed charges under this law against Faisal Husseini, head of the Arab Studies Society in Jerusalem.[11] It alleged that in a newspaper interview Husseini had said that the PLO was the only legitimate representative of the Palestinian people.[12]

In 1980 the Knesset gave the minister of the interior the power to revoke the citizenship of "a person who has done an act constituting a breach of allegiance to the State of Israel."[13] Since the government defined the PLO as a terrorist organization, a show of support for it would apparently constitute a breach of allegiance. In a 1980 law on nonprofit societies, the Knesset precluded registration of a society "if any of its objects negates the existence or democratic character of the State of Israel."[14] The law was criticized by several members of the Knesset as being aimed against political organizing by Arabs.[15]

In 1986 the Knesset adopted a statute that forbade "contact" with any person holding an executive position in "an organization that the Israeli government has declared a terrorist organization."[16] This law prohibited contact for any purpose, unless based on family ties or on participation in an academic conference.[17] The government prosecuted both Jews and Arabs for meeting with PLO officials.[18] A note in explanation of the 1986 amendment in the Knesset indicated that one purpose was to prevent political contact between Arabs and Jews that might lead to pressure for recognition of Arab rights: "Recent contact of Israelis with activists and official representatives of terrorist organizations have [*sic*] grown both numerous and frequent. This phenomenon is causing Israel serious harm, both politically and in the area of security, and cannot be tolerated. Therefore, we propose to outlaw such contacts, if held knowingly and without lawful authority."[19]

Israel has no constitution that might take precedence over legislation that is discriminatory in nature. The Declaration of the Establishment of the State of Israel called for equality of rights, but Israel's courts did not deem the declaration to be a source of law.[20] The courts

have no power of judicial review of legislation and, therefore, no power to overturn discriminatory laws.[21] Thus, the laws defining Israel as a Jewish state and giving Jews a preferred status cannot be challenged in the courts of Israel.

The possibility of enacting a constitution or a bill of rights has been debated in Israel. A draft bill of rights proposed by the ministry of justice in 1987 would have forbidden discrimination on a wide variety of bases with the stipulation it not affect legislation enacted prior to entry into force of the new constitution. Thus, the Defense (Emergency) Regulations and prior laws of the Knesset would not be affected. Further, the proposal stated that "a legal provision which derives from Israel being a Jewish state shall not be regarded as discriminatory."[22]

Although the Supreme Court of Israel has no power to review legislation, it does review actions of officials,[23] and Arabs frequently use this procedure.[24] Judges of the Supreme Court are appointed for life and are independent of the executive.[25] On occasion the court has annulled government decisions in security-related situations, like a 1989 case in which, for the first time, it countermanded a decision by the censor against the publication of an item proposed for release. The court ruled the censor could not prohibit a newspaper article containing criticism of the head of the state security agency, the Mossad.[26]

But the court rarely questioned officials who took measures against Arabs for reasons of government policy or state security.[27] With administrative detention, the Knesset instituted judicial review in 1979. But it said the review should be conducted in closed session and it need not follow the rules of evidence.[28] The IDF, in particular, has not always obeyed the Supreme Court. In July 1951 the court ruled that Arabs, formerly residents in the Galilee village of Ikrit from which the IDF had excluded them in October 1948, were entitled to return. The IDF, defying the ruling, prevented the residents from returning.[29]

The racial distinctions found in Israel's legislation have led some commentators to call Arabs second-class citizens in Israel.[30] These distinctions are criticized in Israel.[31] Racial discrimination as a matter of state policy violates the customary law of human rights binding on all states.[32] The UN Charter prohibits discrimination by a state

on the basis of race.[33] The International Convention on the Elimination of All Forms of Racial Discrimination, to which Israel is a party, prohibits any "distinction, exclusion, restriction or preference" based on "race, colour, descent, or national or ethnic origin" which has the "purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[34]

Some commentators, who argue that a Jewish state is justified, argue further that if that is so then a preferred legal status for Jews over Arabs is justified as well.[35] Resolution 181, on which they rely, called for a constitution in the two prospective states to guarantee "to all persons equal and nondiscriminatory rights in civil, political, economic and religious matters."[36] Resolution 181 did not contemplate a state in which Jews would enjoy a privileged status.[37]

The UN General Assembly, in part because of the legislative discrimination against Arabs under Israeli law, adopted a resolution in which it called Zionism "a form of racism."[38] This characterization has been strongly criticized.[39] But the opinion that Zionism as practiced in Israel reflects racial animus against the Palestine Arabs is widely held in the world community. In particular, those states previously subject to foreign authority view the Palestine Arabs as being in the situation in which they found themselves prior to independence. The nonaligned countries called Zionism an "imperialist ideology."[40] The Organization of African Unity said that "the racist regime in occupied Palestine and the racist regimes in Zimbabwe and South Africa have a common imperialist origin."[41] The African Charter on Human and Peoples' Rights, in naming in its preamble concepts that involve a denial of rights, listed "colonialism, neocolonialism, apartheid, zionism."[42]

Israel reacted sharply at the United Nations in 1961 when Iraq accused it of being an apartheid state.[43] But a number of Israel's legislative enactments give ethnically based preferences in important areas of national life.[44] By prohibiting the return of expelled Arabs while giving Jews ready entry, by segregating land ownership and use, by providing social services to Jews on a preferential basis, by allowing the national institutions to carry out governmental functions, and by providing special power under the Defense (Emergency) Regulations to suppress opposition to discriminatory treatment, Israel has

created a complex of rules that constitutes something more than casual discrimination.

Apartheid was defined by McDougal, Lasswell, and Chen as "a complex set of practices of domination and subjection, intensely hierarchized and sustained by the whole apparatus of the state, which affects the distribution of all values."[45] The International Convention on the Suppression and Punishment of the Crime of Apartheid prohibited "racial segregation and discrimination" undertaken to dominate a racial group.[46] As an exaggerated form of racial discrimination, apartheid is, like racial discrimination, prohibited by customary international law.[47]

The racial distinctions in Israel's legislation have been called a natural and intended result of the colonization of Palestine,[48] inherent in the ideology of Zionism.[49] Maxime Rodinson, a leading Arabist, wrote that to create a Jewish state in an Arab Palestine on the basis of the Zionist concept "could not help but lead to a colonial-type situation" and to "a racist state of mind."[50]

The Organization of African Unity said that Israel and South Africa share "a common imperialist origin."[51] Each won independence after armed struggle against British rule, then "coped with the problem of keeping their native populations in subordinate status, and perforce resorted to comparable, though not identical, measures."[52] Both are, in the view of a leading African political scientist, "discriminatory ideologies whose implementation inevitably and logically necessitated strategies of repression and ethnic exclusivity."[53]

Other human rights analysts rejected the analogy. Tom Franck argued that South Africa has "almost nothing in common" with Israel,[54] and John Norton Moore denied "that a class of citizens within Israel is denied self-determination as with apartheid in South Africa."[55] But Haifa University psychology professor Benjamin Beit-Hallahmi found the analogy appropriate. He said that "the real problem facing the Israeli settlers" was "the natives." White South Africans were "in the same situation."[56] Former South African prime minister John Vorster viewed Israel's government as confronting a situation similar to South Africa's. Israel was faced with an "apartheid problem" as concerned its Arab inhabitants, he said. "We view Israel's position and problems with understanding and sympathy."[57]

There is a common religious ideology for the Zionist claim in Palestine and the Afrikaaner claim in South Africa.[58] In Afrikaaner

nationalism blacks, as the offspring of Ham, were pagans destined to serve the "new Israelites" as "hewers of wood and drawers of water." Both Afrikaaners and Zionists considered the land to be theirs by divine right.[59]

Some analysts have described Israel's discrimination as less formal than South Africa's. "Whereas South Africa has laws clearly identifiable as racist, Zionist racism is informal, *de facto* and deceptive."[60] While South Africa has been more rigid in some aspects of segregation, particularly in housing, Israel has been more rigid in others. Unlike South Africa, Israel expelled most of the indigenous population. Its segregation in land ownership and use is more thoroughgoing, and the performance of governmental functions by Israel's national institutions has no counterpart in South Africa. Arnold Toynbee, referring to Israel, said that "a racialist state is as bad and as dangerous in the Middle East as it is in southern Africa." He found it "wrong" that "people feel differently about the rights and wrongs of the existence of the state of Israel versus white South Africa."[61]

Part Four

The 1967 War, the West Bank and the Gaza Strip



21

No Peace: War Always on the Horizon

For war breeds war again.
—John Davidson, *War Song*

The 1949 armistice agreements left the Gaza Strip and the West Bank in an uncertain status, Gaza administered by Egypt and the West Bank by Transjordan, and both with a substantial number of refugees. In Gaza the refugees outnumbered the indigenous population. In 1949 Transjordan became the Hashemite Kingdom of Jordan, "Hashemite" after the ruling family, and "Trans" being dropped to indicate that, with the inclusion of the West Bank, the country spanned both sides of the Jordan River. In 1950 Jordan's parliament incorporated the West Bank, fulfilling King Abdullah's long-held objective.[1] But the parliament said it took the step "without prejudicing the final settlement of Palestine's just case within the sphere of national aspirations, inter-Arab cooperation and international justice."[2] It thus acknowledged the self-determination right of the Palestine Arabs. The Arab states and many Palestine Arabs opposed the merger, which was recognized by only Pakistan and Great Britain.[3]

Egypt did not incorporate the Gaza Strip but administered it as "an inseparable part of the land of Palestine."[4] The Egyptian administration continued the law of Palestine in force and issued court judgments "in the name of the people of Palestine."[5] A Gaza constitution adopted in 1962 was declared to be in force "until a permanent constitution for the State of Palestine is promulgated."[6] Egypt's minister of war appointed a governor-general and an eleven-member executive council to administer Gaza.[7] Limited legislative competence was given to a legislative council that consisted of twenty-two elected members, eleven members appointed by the governor-

general, the eleven members of the executive council, and the governor-general.[8]

To stop Arab refugees from returning from Lebanon, Syria, Jordan, and Egypt, the IDF began attacks on villages across the armistice line. Jordan claimed that during 1950 Israel made over one hundred such raids.[9] During 1950 and 1951 the UN Truce Supervision Organization, which had been established to monitor the armistice agreements, and the UN Security Council dealt with repeated charges that Israel had made incursions across the armistice lines.[10] Egypt interfered with the shipment through the Suez Canal of goods destined for Israel, and the Security Council asked it to let the goods pass.[11] Israel also charged armistice violations, but of the many mutual complaints the United Nations resolved most of them against Israel.[12]

Meanwhile, groups of refugees began military raids into Israel, without overall coordination and without direction from the Arab governments.[13] Jordan, where most of the attacks originated, made strenuous efforts to prevent them.[14] Israel met raids with reprisal attacks,[15] often on targets where civilians were in close proximity. Israel viewed its reprisal attacks as justifiable self-defense[16] and also aimed at "teaching a lesson."[17] It wanted to deter not only the guerrillas, but also the Arab governments, which it charged with aggression for allowing the guerrillas to operate.[18]

Ben-Gurion said in 1953 that Israel was "in danger of peace" and that a state of war was necessary to achieve "the fusion of communities," by which he meant the migration of Arab-state Jews to Israel and the settlement of the Palestine Arabs in Arab states.[19] Ben-Gurion's reference to the danger of peace indicated his belief that hostilities needed to be maintained so the Arab states would be suspicious of their Jewish populations, which he hoped would result in their migrating to Israel.

Arab states regularly complained of the reprisals to the UN Security Council, which routinely rejected Israel's claims of self-defense.[20] The council said that "reprisals have proved to be productive of greater violence rather than a deterrent to violence."[21] Israel's reprisal attacks, because of their severity, were credited with escalating the guerrilla raids.[22] The Security Council condemned Israel for many such attacks.[23] In 1953 the IDF conducted a reprisal raid on the West Bank town of Qibya, killing sixty-six civilians.[24] The IDF unit, commanded

by Ariel Sharon, blew up houses with the inhabitants inside.[25] UN military observers arriving two hours after the raid said that "bullet-riddled bodies near the doorways and multiple bullet hits on the doors of the demolished houses indicated that the inhabitants had been forced to remain inside until their homes were blown up over them." They reported that "witnesses were uniform in describing their experience as a night of horror, during which Israeli soldiers moved about in their village blowing up buildings, firing into doorways and windows with automatic weapons and throwing hand grenades."[26] Ben-Gurion issued a statement claiming that the Qibya operation had been conducted by private Israeli citizens, not by the IDF.[27] Foreign Minister Moshe Sharrett told Israel's cabinet the raid was a "monstrous bloodbath" which "exposed us in front of the whole world as a gang of blood-suckers, capable of mass massacres."[28] The Security Council said the raid on Qibya violated the UN Charter. It also called on Jordan, which had promised to try to stop future guerrilla raids,[29] to prevent "crossing of the demarcation line by unauthorized persons, often resulting in acts of violence."[30]

Most Security Council resolutions on Israel's reprisal raids contained no such cautionary language. Denouncing a 1955 attack on the Egyptian army in the Gaza Strip, in which the IDF killed thirty-eight Egyptian soldiers, the council found a "prearranged and planned attack ordered by Israel authorities . . . committed by Israel regular army forces against the Egyptian regular army force," which it condemned as a violation of the Egypt-Israel 1949 armistice and of the UN Charter.[31] The council condemned a 1955 IDF attack on Syrian military posts in which fifty-six Syrians were killed.[32] The council rejected Israel's argument of retaliation for smaller Syrian attacks, saying that "military action in breach of the General Armistice Agreements" was unlawful, "whether or not undertaken by way of retaliation."[33] U.S. assistant secretary of state Henry Byroade criticized Israel's attacks: Israel had developed "the attitude of the conqueror" and the belief that force and "retaliatory killings" were the "only policy" its "neighbors would understand."[34]

Moshe Dayan, Israel's chief of staff, saw a domestic political purpose in the reprisal policy. He said that reprisals "make it possible for us to maintain a high level of tension among our population and in the army. Without these actions we would have ceased to be a combative people and without the discipline of a combative people we

are lost. We have to cry out that the Negev is in danger, so that young men will go there."[35]

At the same time, Dayan recognized the justice of the refugees' view that force was permissible to regain their homeland. Delivering a eulogy for a friend killed in a refugee raid across the Gaza border in 1956, he said: "Let us not today fling accusations at the murderers. Who are we that we should argue against their hatred? For eight years now, they sit in their refugee camps in Gaza, and before their very eyes we turn into our homestead the land and the villages in which they and their forefathers have lived."[36]

During the early 1950s, according to Prime Minister Moshe Sharett, the IDF establishment made contingency plans to invade and occupy the West Bank.[37] In 1951 Ben-Gurion formulated a plan to seize the Gaza Strip and approached Britain to ask its acquiescence. The British government objected, and Ben-Gurion dropped the plan.[38] In 1954, according to Sharett, the IDF sought a way to initiate a war with Egypt in order to take the Gaza Strip.[39] In 1955 Ben-Gurion asked the cabinet to approve an invasion of the Gaza Strip. After five days of discussion the cabinet rejected the proposal, concerned over the likely U.S. reaction.[40]

But in 1956 Israel, together with France and Britain, invaded Egypt and occupied the Gaza Strip and the Sinai Peninsula.[41] During the invasion General Itzhak Rabin, as commander of Israel's northern region, expelled from the Galilee to Syria four thousand villagers whom the IDF had earlier removed from their homes in connection with water diversion projects.[42] The Security Council did not condemn the tripartite invasion of Egypt because France and Great Britain, as permanent council members, enjoyed power of veto. It did, however, call an emergency special session of the General Assembly, finding "that a grave situation has been created by action undertaken against Egypt."[43] In a memorandum to the UN secretary-general Israel proposed to take over the administration of the Gaza Strip,[44] but the secretary rejected the idea.[45] Israel withdrew from the Gaza Strip and Sinai Peninsula under strong international pressure, particularly from the United States.[46] The United Nations put an emergency force (UNEF) on the Egyptian side of the 1949 armistice line to assure there were no further hostilities.

In Egypt few Jews had emigrated in the wake of the establish-

ment of Israel, though anti-Jewish sentiment had been manifested there at the time, including violence against Jews. As well, Israel's Mossad secret service had been urging Egyptian Jews to migrate to Israel. "It's true that we encouraged the Jews to leave," one Mossad agent explained. "We believed that if they did not leave at once it would be too late. We really believed it. . . . Also the State needed them."[47] After the 1956 invasion, however, the bulk of Egyptian Jewry did leave Egypt. The government of Egypt ordered many Jews to leave,[48] fearing subversive acts. Egypt's fear stemmed from bombings carried out in Egypt in 1954 by an Israeli underground. The government of Israel had ordered the bombings to convince Britain to keep its troops there and to convince the United States and Britain that Egypt's nationalist president, Gamel Abdel Nasser, was a risky ally.[49] The underground agents bombed U.S. and British property in Alexandria and Cairo, following which they were captured and convicted. In an Israeli court proceeding on an unrelated matter in 1960 it came to light that Israeli officials had forged the name of then Defense Minister Pinhas Lavon on the order for the bombings.[50]

The guerrilla raids and reprisal attacks continued into the 1960s. In 1962 the UN Security Council condemned an IDF attack into Syria across the Sea of Galilee as a "flagrant violation" of Syrian territory.[51] It condemned a 1966 IDF attack into the West Bank village of Samu, where an IDF force of 4,000 in armored cars and tanks, with air support, killed fifty people, and demolished 140 buildings.[52] Deploring "the loss of life and heavy damage to property" resulting from the attack, the council characterized it as "a large-scale and carefully planned military action." It said "that actions of military reprisal cannot be tolerated," and threatened that, "if they are repeated, the Security Council will have to consider further and more effective steps as envisaged in the Charter to ensure against the repetition of such acts."[53]

Guerrilla action in the 1950s had been undertaken by small groups of refugees. During that period the Palestine Arabs looked primarily to Arab states to secure their return to Palestine. In 1964 the Arab states formed the Palestine Liberation Organization (PLO).[54] It asserted a right to use "all possible means to retain their human dignity and restore their usurped rights."[55] In the early 1960s a group of Palestine Arab refugees formed another organization, called the

Palestine National Liberation Movement.[56] Better known by its acronym, Fatah, this group thought reliance on the Arab states was unrealistic and therefore the Palestine Arabs would have to conduct their own military operations against Israel. In 1965 Fatah began raids into Israel against weapons depots and IDF patrols.[57] Egyptian President Nasser declared the military action premature, and Arab states impeded Fatah operations.[58]

In April 1967 the IDF undertook cultivation of land in the demilitarized zone along the Israel-Syria armistice agreement. Israel claimed sovereignty in the portion of the demilitarized zone that fell on its side of the 1949 armistice line, which ran through the middle of the zone. Syria protested that claim of sovereignty as a violation of the armistice agreement.[59] The Security Council had previously agreed with Syria on this point and had criticized Israel for activities it had undertaken in the zone.[60] To stop the cultivation, Syria attacked into the demilitarized zone April 7, and Israel subsequently retaliated.[61]

These border incidents continued,[62] and General Itzhak Rabin, as Israel's chief of staff, declared Israel's security dependent on the overthrow of the Syrian government.[63] On May 11 Prime Minister Levi Eshkol said in a speech that "in view of the fourteen incidents of the past month," Israel "may have to adopt measures no less drastic than those of April 7."[64] On May 13 Eshkol said in a radio interview that "the focal point of the terrorists is in Syria, but we have laid down the principle that we shall choose the time, the place and the means to counter the aggressor."[65] Syria complained to the Security Council about these threats.[66] The threats may have been made for domestic political purposes,[67] but Israeli officials repeated them in private to journalists and to Soviet diplomats, thereby making the threats appear to Arab leaders as serious.[68] Israel apparently meant the threats.[69]

Syria sought help from Egypt, with which it had a mutual defense agreement, exaggerating the level of Israeli troop activity near the Israel-Syria armistice line.[70] These exaggerations were repeated to Egypt by the USSR in an apparent effort to influence Egypt to make a show of force to protect Syria.[71] The UN Truce Supervision Organization investigated and reported that there was no Israeli troop buildup near Syria.[72] But President Nasser became convinced by the Soviet warning that an Israeli attack on Syria was imminent.[73]

Tanks were absent from Israel's May 15 Independence Day parade in Jerusalem,[74] which suggested they were being massed for an attack.[75] The Soviet government stated that "Israeli forces, drawn up to the Syrian border, have been put in a state of battle readiness."[76] The Soviet misapprehension may have been based in part on leaks by the Israeli government to the USSR that Israel was in fact planning to attack Syria.[77]

On May 16 Egypt asked the United Nations to move the UNEF, and the UN commander said the request was for withdrawal of "all UN troops which install OPS [observation posts] along our borders." Secretary-General U Thant requested clarification[78] and said that Egypt requested total withdrawal,[79] specifically from Sharm el-Sheikh, which commands the entrance to the Gulf of Aqaba, through which Israel had access to its southern port of Eilat.[80] "I pointed out," said Thant, "that if the intention were a temporary withdrawal of UNEF from the armistice demarcation line, the request was 'unacceptable,'" and "that UNEF 'cannot now be asked to stand aside in order to become a silent and helpless witness to an armed confrontation between the parties.' If complete withdrawal were intended, and if that intention were properly communicated to me, I would have 'no choice but to order the withdrawal of UNEF from Gaza and Sinai as expeditiously as possible.'"[81] But Nasser later said he had asked for withdrawal "only from a part of the border running from Rafah to Eilat," but not "from Gaza and Sharm el-Sheikh, which controls the entrance to the Gulf."[82]

According to General Rabin, Nasser had requested the UNEF withdrawal "only from the portion of the border from Rafah to Kuntilla, and he suggested that the UN soldiers be regrouped at Gaza and at Sham el-Sheikh." But "unfortunately," according to Rabin, "Thant made him choose—to keep the international force at all their positions or, on the other hand, to request their total and definitive withdrawal."[83] On May 18 Egypt requested total withdrawal.[84] Nasser said in a 1970 interview that Thant "decided to withdraw all the 'blue hats,'" thus "forcing me to send Egyptian forces to Sharm el-Sheikh."[85] Thant appears to have led Nasser to make a request for total withdrawal.[86]

Israel said that Egypt requested the withdrawal to initiate war with Israel. But Indar Jit Rikhye, the UN commander, reported that Egypt gave as its reason that it contemplated "action against Israel,

the moment it might carry out any aggressive action against any Arab country."[87] Thant proposed the United Nations arrange a settlement. Egypt accepted the idea, but Israel rejected it.[88] Thant asked Israel to accept the UNEF on its side of the 1949 armistice line. Israel declined.[89] "If only Israel had agreed to permit UNEF to be stationed on its side of the border, even for a short duration," wrote Thant, "the course of history could have been different. Diplomatic efforts to avert the pending catastrophe might have prevailed; war might have been averted."[90] While Israel's rejection of Thant's offer has been attributed to the inefficacy of the UNEF being stationed on Israel's side of the armistice line,[91] the more probable inference is that Israel was not concerned about an Egyptian attack[92] and that the UNEF withdrawal "did not constitute a serious threat to Israel's security."[93]

Mortal Danger?

The 1967 Israel-Arab War

Appearances often are deceiving.—Aesop, *The Wolf in Sheep's Clothing*

As tension grew, Israel announced a full military mobilization on May 19, including a call-up of its reserves.[1] On May 22 Egypt announced that it would close the Straits of Tiran to Israeli-flag vessels and to any vessels carrying strategic goods to Israel.[2] The Straits of Tiran led into the Gulf of Aqaba, which provided access to Israel's southern port of Eilat. Egypt said its purpose was to prevent Israel from transporting strategic goods it might use in an attack on Syria. It cited Israel's threats against Syria and the presumed Israeli troop buildup facing Syria.[3] Egypt took the decision because of the removal of the UNEF from Sharm el-Sheikh, evidently concerned that with the UNEF gone, Israel might transport strategic goods to Eilat.[4]

Citing the Egyptian action, Israel said it faced "economic strangulation." But Egypt did not restrict non-Israeli-flag vessels carrying nonstrategic materials, or Israeli-registered vessels chartered to a non-Israeli carrier.[5] During the two years preceding June 1967 no Israeli-flag vessel had used the port of Eilat.[6] Most of Israel's commerce used Mediterranean ports.[7] The most significant cargo for which Israel used Eilat was oil, which was carried on non-Israeli flag vessels.[8] This would have constituted the major detriment to Israel from the closure.

Egypt at this time also moved troops toward the Israel-Egypt armistice line. Its aim, it declared, was to deter Israel from attacking Syria.[9] On May 22 General Rabin reported to Israel's cabinet that the Egyptian forces were in a defensive posture, that they were not being deployed to attack.[10] The IDF concluded that Nasser meant to intervene in case of an Israeli attack against Syria.[11] U.S. intelligence likewise did not expect Egypt to attack in the absence of an Israeli

invasion of Syria. On May 26 the United States communicated that assessment to Israel.[12] On May 20 Jordan concluded a defensive treaty with Egypt, and on June 3 Egypt withdrew some of the troops from the Israel-Egypt armistice line.[13] Egypt's belief that Israel might attack Syria had apparently motivated its troop concentration, its request for UNEF withdrawal, and its closure of the Straits of Tiran to Israeli shipping.[14]

On June 4 the cabinet of Israel authorized an invasion of Egypt.[15] On the morning of June 5 Israel's air force bombed Egyptian aircraft on the ground at their bases, destroying 300 of Egypt's 340 combat aircraft.[16] At the same time Israel sent ground troops through the Gaza Strip into the Sinai Peninsula.[17] Israel's attack, which took Egypt by surprise, followed a long and well-rehearsed plan.[18] "Sixteen years' planning had gone into these initial 80 minutes," said Brigadier Mordechai Hod, commander of Israel's air force. "We lived with the plan, we slept on the plan, we ate the plan. Constantly we perfected it."[19]

Jordan retaliated later in the morning of June 5 with shelling in the Jerusalem area[20] and made air strikes farther into Israel.[21] In so doing, Jordan acted in response to Israel's attack on Egypt in exercise of the right of collective self-defense permitted under Article 51 of the UN Charter.[22] On June 5 the United States sent Israel ammunition and jet fighters.[23] Although the United States did not acknowledge a direct role in the fighting, it sent reconnaissance aircraft that traced nighttime movement of Egypt's ground troops to facilitate daytime Israeli air attacks on them.[24] The Egyptian troops were forced to move at night because, with their air force destroyed, they had no protection against air strikes.[25] The air strikes were important in Israel's rapid victory.[26]

Israel's air force attacked Jordan's and Syria's aircraft in the manner it had done to Egypt's and by the evening of June 5 it had destroyed the air warfare capacity of all three.[27] Messages intercepted by a U.S. intelligence ship—according to Wilbur Crane Eveland of the Central Intelligence Agency—indicated that Israel did not plan to limit its attack to Egypt.[28] Israel intercepted and "doctored" Egypt's communications to Jordan and Syria, Eveland said, to make them believe Egypt had repelled Israel's invasion.[29] Israel apparently wanted the Arab states to believe they had a chance to win, so they would continue fighting.[30]

By the time a cease-fire was effected June 8 Israel had taken the West Bank, the Gaza Strip, and the Sinai Peninsula.[31] On June 9 Israel attacked Syria, which had shelled targets in Israel June 5–8 but had not otherwise engaged in the war.[32] After occupying Syria's Golan Heights, Israel stopped its attack June 10, under pressure from the United States.

In the Security Council on June 5 Egypt charged Israel with aggression,[33] as did the USSR.[34] But Israel claimed that Egypt had struck first. It told the council that "in the early hours of this morning Egyptian armoured columns moved in an offensive thrust against Israel's borders. At the same time Egyptian planes took off from airfields in Sinai and struck out towards Israel. Egyptian artillery in the Gaza Strip shelled the Israel villages of Kissufim, Nahal-Oz and Ein Hashelosha. Netania and Kefar Yavetz have also been bombed. Israeli forces engaged the Egyptians in the air and on land, and fighting is still going on."[35]

The next day Foreign Minister Abba Eban repeated this version of events to the council. "On the morning of 5 June, when Egyptian forces engaged us by air and land, bombarding the villages of Kissufim, Nahal-Oz and Ein Hashelosha," he said, "we knew that our limit of safety had been reached, and perhaps passed. In accordance with its inherent right of self-defence as formulated in Article 51 of the United Nations Charter, Israel responded defensively in full strength." Eban said that "approaching Egyptian aircraft appeared on our radar screens."[36] Eshkol, in a speech to the Knesset, said that the "existence of the Israeli state" had "hung in the balance."[37]

In fact, Egypt had not attacked by land or air and none of its aircraft had approached Israel. Neither the Security Council nor the General Assembly could take a stand on the hostilities. The United States, according to President Lyndon Johnson, was aware that Israel had initiated the hostilities,[38] but it supported Israel's claim that Egypt had attacked it. With its permanent members split on the issue, the Security Council condemned neither side for aggression. The General Assembly on July 4 defeated a Soviet-proposed resolution that would have named Israel the aggressor.[39]

On July 7 Eshkol acknowledged that Israel had struck first, abandoning Israel's position that Egypt had initiated the hostilities. But Eshkol said Israel's attack had been a "legitimate defense," in antici-

pation of an Egyptian attack on Israel.[40] Israel argued that the "massive concentration of Arab forces on Israel's borders" endangered "its very existence."[41]

To support its view that Egypt had been about to attack it, Israel cited Egypt's request for the departure of the UNEF, its closure of the Straits of Tiran, its positioning of troops near Israel, its May 30 alliance with Jordan, and verbal threats by President Nasser.[42] Israel's change of argument created skepticism about both its versions of the facts. "At first Israel claimed that the Arab armies had attacked her first," wrote Michael Akehurst. "If this Israeli claim is false, why did Israel tell a lie?"[43] But Israel's assertion it was about to be attacked was widely accepted.[44]

Various Israeli officials said later, however, that Israel had not in fact anticipated an imminent attack by Egypt when it struck June 5.[45] General Rabin, consistent with his reports to the cabinet in May 1967, said, "I do not believe that Nasser wanted war. The two divisions he sent into Sinai on May 14 would not have been enough to unleash an offensive against Israel. He knew it and we knew it."[46] Rabin said Nasser massed troops to deter an attack by Israel on Syria to appear as "the savior of Syria and thus win great sympathy in the Arab world." Rabin said the forces Nasser sent into Sinai May 20–22 were not planning an offensive against Israel.[47]

General Matitiahu Peled, a member of Israel's general staff during the 1967 war, said that "the thesis according to which the danger of genocide weighed on us in June 1967, and that Israel struggled for its physical existence is only a bluff born and developed after the war."[48] Peled confirmed that Rabin had told the cabinet Egypt had not planned to attack. "Our General Staff," he said, "never told the government that the Egyptian military threat represented any danger to Israel."[49]

Ezer Weizman, chief of the general staff branch, said that had Egypt attacked, Israel would have defeated it—"maybe thirteen hours would have been needed instead of only three—that Jordan had offered little opposition, and that Syria posed no "real threat," which is why Israel waited "three days before attacking it."[50] Weizman said that "a country does not go to war only when the immediate threat of destruction is hovering." Explaining Israel's decision to strike, he said, "We entered the Six-Day War in order to secure a situation in which we can manage our lives as we see fit without external pres-

sures." He called the 1967 war "a direct continuation" of the 1948 war.[51]

Menachem Begin, when prime minister, said that "the Egyptian Army concentrations in the Sinai approaches do not prove that Nasser was really about to attack us. We must be honest with ourselves. We decided to attack him." Begin gave an analysis similar to Weizman's of Israel's motive. He said Israel's aim was to "take the initiative and attack the enemy, drive him back, and thus assure the security of Israel and the future of the nation."[52]

Even if Israel had expected Egypt to attack, it is not clear a preemptive strike is lawful.[53] The UN Charter, Article 51, characterizes armed force as defensive only if it is used in response to an "armed attack." Most states consider this language to mean that a preemptive strike is unlawful.[54] India, for one, asserted in General Assembly discussion of the June 1967 hostilities that preemptive self-defense is not permitted under international law.[55] Most authorities agree with that view,[56] though some say force may be used in anticipation of an attack that has not yet occurred but is reasonably expected to occur imminently.[57] Israel did not face such a situation.

Israel also claimed that Egypt's partial closure of the Straits of Tiran gave it a right to use force against Egypt.[58] It called the closure an "armed attack" against Israel. In the UN General Assembly Eban said that blockades are "acts of war. To blockade, after all, is to attempt strangulation."[59] A blockade, to be sure, is an aggressive act.[60] But from Egypt's viewpoint the purpose was to keep Israel from getting strategic material it might use to invade Syria.[61]

It is doubtful Egypt's action of May 22 was a blockade as that term is generally understood. The navigable channel through the Straits of Tiran is only one mile from Egypt's shore, well within its territorial waters. No state had ever been deemed to have set up a blockade for stopping foreign shipping in its own territorial waters.

Israel also said that all states enjoyed a right under customary international law to passage through the Straits of Tiran and Israel was entitled to use force to secure passage. Egypt denied the existence of any such customary law right.[62] It argued that Egypt and Israel had been in a state of war since 1948 and that, as a result, Egypt was not required to afford Israel rights to which Israel might

have been entitled in peacetime.[63] Israel contended that the 1949 Israel-Egypt armistice had terminated the state of war.[64] But an armistice, according to the accepted view, does not terminate a state of war.[65] The Israel-Egypt armistice, in particular, had not been viewed as having terminated the state of war between the two.[66] And the right to exclude a belligerent's shipping, justifiable as a war measure, continues even after an armistice.[67]

Israel argued that no state of war existed with Egypt on the additional theory that a state of war between two UN member states is impossible, since the charter prohibits aggressive war.[68] Most states reject that view, however, as it would mean that when two states fight, no law would govern the hostilities.[69]

Egypt also argued in defense of its action that the Straits of Tiran was not in fact a strait and, therefore, it did not have to permit vessels of other states to pass through. It said that only a passage between two areas of the high seas is a strait.[70] The Straits of Tiran lead from the high seas into a bay, the Gulf of Aqaba.[71] The 1958 Geneva Convention on the Territorial Sea and Contiguous Zone had defined "strait" to include a passage between the high seas and a bay,[72] but Egypt had refused to sign the convention, precisely because of that provision.

The question of a right of passage through the Straits of Tiran had been discussed at the conference leading to the Geneva Convention. A majority of delegates said there was a right of passage through them in customary international law, but others disagreed.[73] U.S. secretary of state John Foster Dulles conceded at the time the "plausibility from the standpoint of international law" of Egypt's position.[74] Arthur Dean, the head of the U.S. delegation at the Geneva conference, said the convention's position that a passage from the high seas to a bay is a strait was a "new rule," which was clearly aimed at the Straits of Tiran.[75] Thus, the general view was that the convention did not reflect customary law on this point.[76] Saudi Arabia, which holds the eastern shore of the Gulf of Aqaba, argued that the gulf was a closed or "historic" sea and, therefore, not open to passage.[77] That argument was not made by Egypt and was rejected by Israel.[78]

Some authorities thought Egypt had violated Israel's rights by its partial closure of the Straits of Tiran,[79] while others disagreed.[80] Even if Israel had a right to passage through the Straits, however, it was probably not entitled to attack Egypt to assert that right. The

Egyptian refusal to permit passage would give rise to a dispute whose resolution would need to be sought by peaceful means.[81] The closure is not an "armed attack." Further, under the doctrine of proportionality in use of force, even if Israel had the right to use force, it would have had to use only enough to secure its right of passage. It is not clear Israel would be entitled to undertake a full-scale invasion of Egypt.

23

Déjà Vu: Israel's Control of the West Bank and Gaza

To win a war is as disastrous as to lose one! We shall not survive war, but shall, as well as our adversaries, be destroyed by war.
—Agatha Christie, *An Autobiography, X*

During the 1967 war 350,000 Palestine Arabs were displaced from the West Bank and Gaza Strip,[1] a figure that represented 25 percent of the population of the two areas. As the IDF attacked their localities, some residents fled in fear, recalling the 1948 killings,[2] and the flight was heavy from the West Bank town of Qibya, site of the 1953 killings.[3] The Jordanian army's rapid retreat contributed to the fear, and in some localities the IDF forced civilians out.[4]

The IDF aerial bombardment led many civilians to flee. The U.S. embassy in Jordan reported during the fighting: "IDF Air Force yesterday and again today hit many civilian targets on West Bank where there are absolutely no military emplacements."[5] Aerial bombardment by the IDF caused 35,000 inhabitants of three refugee camps near Jericho to flee.[6] Of West Bank Arabs who took refuge in Jordan, 57 percent cited the bombardment as the reason for their departure.[7] In a few situations the IDF dropped napalm on civilians,[8] and on refugees east of the Jordan River—people who had fled from the Jericho area.[9]

In Qalqilya the IDF drove residents out by force after destroying 850 of the town's 2,000 houses.[10] The IDF blew up the entire villages of Emmaus, Yalu, and Beit Nuba—near Jerusalem[11]—and drove the villagers toward Jordan.[12] Others who saw these refugees joined them out of fear.[13] In some localities the IDF forced Arab residents onto trucks and drove them to the Jordan frontier,[14] in others it used loudspeakers to order people to leave.[15] A UN representative relayed "persistent reports of acts of intimidation by Israeli armed forces and

of Israeli attempts to suggest to the population by loud-speakers mounted on cars, that they might be better off on the East Bank."[16] In some towns soldiers fired their guns, knocked on doors, and searched the same houses for arms, night after night. IDF officers suggested that those with military training and their families should leave "for their own safety."[17] In some areas the IDF pointedly made buses and trucks available, day after day, to transport to the Jordan River any Arabs who feared to remain.[18] At the United Nations, Israel denied expelling Arabs. In a note to the secretary-general on June 22 it stated: "Any allegation that Israel has been expelling residents from their homes and thus creating a new refugee problem is untrue."[19]

As soon as Israel had secured control over the West Bank and Gaza Strip, Prime Minister Eshkol, referring to them as "the new areas," said Israel would retain them for security reasons.[20] "Be under no illusion that the State of Israel is prepared to return to the situation that reigned up to a week ago. . . . The position that existed until now shall never again return."[21] Eshkol ordered the foreign ministry and bureau of statistics to omit the 1949 armistice lines from maps.[22] In the General Assembly Eban said, "the suggestion that everything goes back to where it was before 5 June" was "totally unacceptable."[23] Information Minister Israel Galili said that Israel could not return to the 1949 armistice lines, that the "armies, tanks and planes of the United Arab Republic, Jordan, Syria and Iraq" had "nullified the armistice agreements."[24] Defense Minister Moshe Dayan said that Israel should not "in any way give back the Gaza strip to Egypt or the western part of Jordan to King Hussein."[25]

While these statements might be consistent with an intent to return the territories as part of a future settlement, their likely meaning was that Israel intended to retain them for the foreseeable future.[26] General Weizman said the war had served "Zionist objectives," that "our national instincts led us to take advantage of it beyond the immediate military and political problems it came to solve."[27] According to Eban, Israel had anticipated Jordan's defense of Egypt because of the two countries' May 30 treaty of defense.[28] Jordan's minister of information, Abdel-Hamid Sharaf, had declared on June 4 that Jordan would fight Israel if Israel invaded Egypt.[29] For Israel, attacking Egypt thus opened the prospect of taking both the Gaza Strip and the West Bank and thereby securing the portion of Palestine eluded in 1948.

Mordecai Bentov, a cabinet minister who attended the June 4 cabinet meeting and supported the decision to invade Egypt,[30] said Israel's "entire story" about "the danger of extermination" was "invented of whole cloth and exaggerated after the fact to justify the annexation of new Arab territories."[31]

Many Israeli leaders considered the West Bank and Gaza a part of Israel it should have taken in 1948.[32] For Itzhak Shamir, a former LEHI leader and future prime minister, the war was "a historical and revolutionary turning point" in Jewish history that "put the stamp of permanency on the state's borders." He continued, "a fragmented country with fragile borders and a divided capital became a stable nation with a reasonable defence capacity, with its eternal capital united."[33] Supreme Court Judge Moshe Silberg said, "Something happened in June 1967 in Israel. Under the rushing noise of the wings of history, in the cruel storm of war, a sudden encounter took place between the people and the land."[34]

As after the 1948 war, the government began to settle Israelis in the newly acquired territory. In September the World Zionist Organization founded the first settlement.[35] "No political victory, no proclamation," it declared, "can convert these territories into Jewish territories if they are not settled by Jews."[36]

The UN Security Council called for a cease-fire in the 1967 hostilities, but as a result of the position taken by the United States it did not issue a clear call to Israel to withdraw.[37] In November 1967, in its Resolution 242, the council asked Israel to withdraw but in the context of an envisaged general settlement with Arab states.[38] The United States blocked an alternative resolution proposed by Latin American states to make an unconditional call on Israel for withdrawal.[39] In the drafting of Resolution 242 it blocked the placement of the word "the" before "territories" from which Israel was to withdraw, thereby leaving it unclear whether withdrawal was to be from all the territories it had occupied, or only from some portion.[40]

By conditioning Israel's obligation to withdraw on recognition of Israel by the Arab states, the Security Council in effect made the attainment of self-determination by the Palestine Arabs contingent on acts by others. This was a dubious approach since the exercise of a right cannot be conditioned on acts that may or may not be taken by a group of states. The International Court of Justice said as much

when it ruled on the question of whether member states of the United Nations could vote against the admission of new states as members on the ground that they wanted other states to be admitted as part of a package. The court said admission was a right for a state satisfying the criteria set in the UN Charter and, therefore, a member state could not make an affirmative vote conditional on other considerations.[41]

Viewed from another perspective, Resolution 242 sought to force Arab states to recognize Israel's control over the territory inside the 1949 armistice lines in exchange for Israel's withdrawal from the Gaza Strip and West Bank.[42] Syria criticized Resolution 242 for neglecting "the uprooted, dispossessed people in exile."[43] The Organization of African Unity said Resolution 242 failed to guarantee the rights to which the Palestinian people are entitled.[44]

Since Resolution 242 called on Israel to withdraw from the West Bank and Gaza Strip, but from no further territory, it was interpreted by some as an implied recognition of Israel's sovereignty within the 1949 armistice lines. "It would appear," wrote Konstantin Obradovič, "that the international community has tacitly resigned itself to the fruits of the 1948 conquest remaining finally in Israeli hands, although in strictly legal terms, that should obviously not be the case."[45]

It is questionable, however, that Resolution 242 had this effect. Resolution 242 sought to deal with the recent hostilities and did not address the question of Israel's borders. The Security Council adopted Resolution 242 under Chapter 6 of the UN Charter, which gives it the power to recommend solutions for disputes.[46] The council did not act under Chapter 7, which gives it the power to make decisions binding on member states to resolve breaches of the peace.[47] Thus, whatever its meaning, Resolution 242 was not binding on UN member states.

In any event, in 1980 the Security Council issued an unconditional call on Israel to withdraw from the Gaza Strip and West Bank. "Reaffirming that acquisition of territory by force is inadmissible," it referred to "the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem."[48] The General Assembly also called for unconditional withdrawal. It said that "the acquisition of territory by force is inadmissible" and that "Israel must withdraw unconditionally from all the

Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem."[49] The UN Commission on Human Rights characterized the occupation from a human rights perspective as "a fundamental violation of the human rights of the civilian population of the occupied Arab territories."[50]

After the 1967 war Israel treated east Jerusalem differently from the rest of the West Bank. The Knesset quickly adopted a law stating that "the law, jurisdiction and administration of the state" of Israel "shall extend to any area of Eretz Israel designated by the Government by order."[51] Using this law, the government declared Israeli law applicable to an area that included east Jerusalem, plus adjacent West Bank territory of approximately equal size.[52] The government merged this newly enlarged east Jerusalem area with west Jerusalem.[53] Justifying the incorporation, Eshkol said, "Israel without Jerusalem is Israel without a head."[54] The action was condemned by the UN Security Council and General Assembly as annexation and, therefore, a violation of the rights of the Palestine Arabs.[55] The annexation of east Jerusalem was not recognized by other states and was condemned as unlawful.[56] In 1980 the Knesset declared "Jerusalem, complete and united" to be "the capital of Israel." The Knesset denominated this law a "basic law," giving it quasi-constitutional rank.[57] The Security Council and General Assembly declared the 1980 law a nullity.[58]

A number of theories were suggested to justify Israel's temporary or permanent retention of the West Bank and Gaza Strip, but all were based on the view that Israel acted in self-defense. One theory was that a state taking territory in self-defense may lawfully annex it.[59]

As already indicated, however, a state that uses force in self-defense may not retain territory it takes while repelling an attack.[60] If Israel had acted in self-defense, that would not justify its retention of the Gaza Strip and West Bank.[61] Under the UN Charter there can lawfully be no territorial gains from war, even by a state acting in self-defense.[62] The response of other states to Israel's occupation showed a virtually unanimous opinion that even if Israel's action was defensive, its retention of the West Bank and Gaza Strip was not.[63]

Another thesis was that Israel's taking of the West Bank and Gaza Strip was necessary and proportional in relation to its security

needs and that this necessity did not immediately subside.[64] But even if Israel had responded to an imminent attack in 1967, it quickly eliminated any threat to itself. At that point its defensive right would have ceased and it would have been obligated to withdraw.[65]

It was also asserted that Israel might lawfully retain the Gaza Strip and West Bank, pending a peace agreement between itself and the Arab states.[66] Others argued it might lawfully retain them permanently on the theory that Jordan had not held lawful title and, therefore, there was no sovereign power to whom the territories could revert. Israel, it was said—particularly because it took the territories defensively—had a better claim to title than anyone else.[67] That argument ignored, however, the generally recognized proposition that uncertainty over sovereignty provides no ground to retain territory taken in hostilities. Even if Jordan held the West Bank on only a de facto basis, Israel could not, even acting in self-defense, acquire title.[68] The argument also overlooked the fact that the Palestine Arabs as a collectivity had a sound claim to the Gaza Strip and West Bank on the basis of their right of self-determination.

24

More Land: Confiscation and Settlements

The right of conquest has no foundation other than the right of the strongest.
—Jean-Jacques Rousseau, *Social Contract*

After taking the Gaza Strip and West Bank in 1967, the government of Israel replicated there many of the policies it had used since 1948 to acquire land.[1] It applied the same land confiscation laws.[2] The Jewish National Fund began acquiring land in the Gaza Strip and West Bank in conjunction with the government.[3] In addition, and unlike its system inside the 1949 armistice lines, the government authorized individual Israelis to buy land in the West Bank and Gaza Strip.[4] Through confiscation and purchase, Israeli interests acquired half the land area of the Gaza Strip and West Bank. Added to the land taken within the 1949 armistice lines, this gave Israel the ownership of 85 percent of the land area of Palestine.[5] Thus "the Zionist movement," said Meron Benvenisti, an Israeli former vice-mayor of Jerusalem, had "achieved its maximum territorial goal: control over the entire area of Mandatory Palestine."[6]

Israel referred to the Gaza Strip as Gaza District and to the West Bank by the ancient names of Judea for the sector around Jerusalem, and Samaria for the northern sector.[7] Development planning was undertaken jointly by the government and the World Zionist Organization. In 1983 the organization and the ministry of agriculture jointly prepared the Master Plan and Development Plan for Settlement in Samaria and Judea.[8] The organization and the Jewish Agency financed and organized civilian settlements.[9] The Jewish National Fund built roads to service the settlements and to facilitate troop movement.[10] The Master Plan envisaged the eventual incorporation of the West Bank into Israel, aiming "to disperse maximally large Jewish population in areas of high settlement priority, using small national inputs and in a relatively short period by using the settlement potential of

the West Bank to achieve the incorporation [of the West Bank] into the [Israeli] national system."[11]

In a court action challenging the construction of a settlement in the West Bank, the Supreme Court of Israel said that the cabinet, in approving the settlement, was "decisively influenced by reasons stemming from the Zionist world-view of the settlement of the whole land of Israel." Judge Moshe Landau cited an affidavit of the attorney general that quoted Prime Minister Menachem Begin as affirming "the Jewish people's right to settle in Judea and Samaria." Judge Landau said this "view concerning the right of the Jewish people" was "based on the fundamentals of Zionist doctrine."[12] Government officials said that settlement construction was aimed at creating a presence to prevent the Palestine Arabs from forming a state.[13] In promoting settlement the government also sought to use the settlements as physical obstacles to separate Arab towns from one another and to decrease the possibility of united political action against the occupation.[14] In the 1980s the government was allocating $300 million annually for settlement construction and maintenance.[15]

In a court case over its right to take private land to build a settlement, the government said in an affidavit that the establishment of the projected settlement was

> "part of the security conception of the Government which bases the security system inter alia on Jewish settlements. In accordance with this concept all Israeli settlements in the territories occupied by the IDF constitute part of the IDF's regional defence system. . . . In times of calm these settlements mainly serve the purpose of presence and control of vital areas, maintaining observation, and the like. The importance of these settlements is enhanced in particular in time of war when the regular army forces are shifted, in the main, from their bases for purposes of operational activity and the said settlements constitute the principal component of presence and security control in the areas in which they are located."[16]

Supreme Court Judge Alfred Witkon justified the establishment of settlements on confiscated Arab land on the ground that "Jewish settlements in occupied territories serve security needs" and aid the IDF. "Terrorist elements," he said, "operate with greater ease in an area solely inhabited by a population that is indifferent or sympathizes with the enemy, than in an area in which one also finds people

likely to observe the latter and report any suspicious movement to the authorities."[17]

The Supreme Court of Israel upheld one confiscation of a tract of privately owned land after the ministry of defense said the purpose was to form a defensive line of three settlements to protect the Tel Aviv airport. The settlement, the ministry claimed, would permit observation of the airport and deployment of military forces. The area was near an important junction that might serve as an alternate route from Tel Aviv to Jerusalem and a settlement there could protect road traffic during unrest in the West Bank.[18]

In one instance the Supreme Court ruled illegal the construction of a projected settlement, to be called Elon Moreh, on private land confiscated for that purpose. The military government of the West Bank, supporting the settlement, argued that it would promote security. The settlers, however, told the court their purpose was to assert a territorial claim to the West Bank. The objective of the settlers undermined the claim of the military government, and as a result the court ruled the settlement illegal.[19]

Just as in the 1930s the Jewish Agency settled land in preparation for statehood, so after 1967 the government of Israel settled the Gaza Strip and West Bank as a step toward permanent control. In the West Bank it elaborated a strategy for locating settlements. The Labor Party, which held power in 1967, developed a plan to build settlements in strategic locations, and the first area to be settled was the Jordan Valley, which forms the eastern border of the West Bank.[20] Settlement there placed Israelis between Jordan and the West Bank's Arab population.

The Likud Party, which came to power in 1977, took a broader view of settlements. The Likud was more explicit in declaring the West Bank to be a part of Israel. It asserted the right to establish settlements at any location in the West Bank, on the ground that it formed part of Eretz-Israel, over which it asserted Israeli sovereignty. On the issue of possible annexation by Israel of the West Bank, the Likud prime minister, Menachem Begin, said, "you can annex foreign land. You cannot annex your own country. Judea and Samaria," he said, "are part of the land of Israel, where the nation was born."[21] Itzhak Shamir, who succeeded Begin as prime minister in 1983, pledged in his inaugural speech to continue what he called the "holy work" of settlement in the West Bank.[22]

Israel's land acquisition and settlement activity in the West Bank and Gaza Strip created "an elaborate network of vested interests."[23] The International Commission of Jurists, citing the "permanent character" of many of the settlements and "pronouncements of Israeli leaders to the effect that they are permanent," viewed the settlements as "a step towards eventual assertion of sovereignty over the territories or part of them." It said this policy violated the self-determination right of the Palestine Arabs.[24] Despite the desire to assert permanent control, many in Israel were concerned that if Israel annexed the West Bank and Gaza Strip, the Jewish majority in Israel's population would be reduced so substantially as to threaten the Jewish character of Israel.[25]

Though the Supreme Court of Israel found most of the settlements to be legal, other states considered them unlawful. The international community held Israel, in its administration of the West Bank and Gaza Strip, to the standards set by human rights law and by the law of belligerent occupation. The law of belligerent occupation, sometimes called humanitarian law, applied since Israel had come into control of the West Bank and Gaza Strip through hostilities. The law of belligerent occupation provides a variety of protections for an occupied population, while ceding to the occupying power the right to protect its temporary tenure. The principal embodiment of the law of belligerent occupation is the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, to which Israel and the neighboring Arab states are parties.[26]

The Geneva Convention requires an occupying power to change the existing order as little as possible during its tenure. One aspect of this obligation is that it must leave the territory to the population it finds there. It may not bring in its own people to populate the territory. This prohibition is found in the convention's Article 49, which states: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." On the basis of Article 49 many states criticized Israel for establishing and maintaining the settlements. Israel responded that the settlers themselves had established the settlements and, therefore, it had not "transferred" its own people. To that it was replied that Israel funded the settlements and that it had used the IDF to establish many of them. One particular use was that the government placed many recent

immigrants in the settlements. In 1987 the UN Human Rights Commission criticized it for the "settlement of alien populations brought from other parts of the world in the place of the original Palestinian owners of land."[27]

Israel also argued that the Geneva Convention was not applicable to its administration of the West Bank and Gaza Strip. It pointed out that Article 2 of the convention refers to the territory of a High Contracting Party and said that this means the convention applies only to territory lawfully held by a contracting party. Jordan did not have good title to the West Bank and Egypt did not have good title to the Gaza Strip.[28] However, it would apply de facto those provisions of the convention it deemed "humanitarian." The Supreme Court of Israel followed that position, applying certain provisions of the convention but not others.[29] It did not find Article 49 to be a "humanitarian" provision.

Israel's view that the Geneva Convention did not apply to its occupation of the Gaza Strip and West Bank was rejected by other states. They argued that, according to Article 1 of the convention, it applies "in all circumstances," and, according to Article 2, it applies to "all cases of declared war or of any other armed conflict." All states that indicated a view on the matter, other than Israel, found the convention to be applicable to Israel's occupation of the Gaza Strip and West Bank.[30]

An earlier treaty on belligerent occupation is the Hague Regulations of 1907.[31] Article 46 of the Hague Regulations states that private property should not be confiscated. Much of the land confiscated in the West Bank and Gaza Strip was taken from private persons. While Israel is not a party to the regulations, they are generally taken to reflect the customary law of nations and, therefore, to be binding on all states. Israel concurs that the Hague Regulations are binding as customary law.[32] After the Supreme Court in the Elon Moreh case said that private West Bank or Gaza Strip land could not be confiscated in the absence of a security justification, the government began confiscation of nominally state-owned land. Much of the land of the West Bank was under a tenure system that was in a technical sense state ownership, though individual families had occupied the land for generations and, so long as they paid taxes on it, were considered its owners.[33]

In 1978 Israel concluded a treaty with Egypt, the Camp David agreement, that required Israel to return the Sinai Peninsula to Egypt.[34] The agreement also made provision for the West Bank and Gaza Strip, calling for limited autonomy for the Arab population, a continued Israeli military presence, and a prohibition against any Palestinian military force.[35] It contemplated, as construed by Israel, permanent control by Israel of the West Bank and Gaza Strip.[36] The West Bank and Gaza population rejected the Camp David agreement, on the grounds they had had no role in its elaboration and it did not contemplate self-determination. The UN General Assembly agreed that the agreement violated the Palestine Arabs' right to self-determination.[37] The agreement was criticized for tending to preserve Israel's control in such a way it would not be forced to bring the two populations into its own political system.[38] It strengthened Israel's tenure in the territories, it was said, by splitting Egypt politically from the other Arab states, thereby freeing Israel to take stronger measures against the Palestine Arabs in the West Bank and Gaza Strip.[39]

Israel's military government in the West Bank and Gaza Strip was comparable in many respects to the military government it had established after 1948 in its own Arab-populated sectors. Rule was by military decree and direct control was exercised by military personnel. Court cases went to military tribunals. Israel did not allow the West Bank or Gaza Strip population any territory-wide governance, though it did to a limited extent at the local level. In the Gaza Strip it permitted no elections for local positions,[40] but in the West Bank it permitted local elections in 1972 and 1976, though it cancelled subsequent elections because it feared more strongly nationalist candidates would be elected. "If we let them run for elections," said the military governor, General Benjamin Ben-Eliezer, in 1981, "the result would be very clear—once and for all to bury the Camp David peace process."[41] The government dismissed a number of nationalist-oriented mayors elected in 1976 and expelled several others.[42]

Israel also did not allow any governing institutions for the 100,000 Arabs of east Jerusalem. After it incorporated east Jerusalem into Israel the Knesset made east Jerusalem residents eligible to vote in Jerusalem municipal elections.[43] But few did so because of their objection to the incorporation.[44]

As it had done after 1948 with the Arabs under its control, the

government tried to direct local Arab politics in the Gaza Strip and West Bank. In the Gaza Strip it promoted Moslem fundamentalist groups that opposed the Palestine Liberation Organization. The military governor for Gaza, General Itzhak Segev, said the government gave him a budget to finance fundamentalist mosques.[45] The government tried to keep aid from private outside development agencies from benefiting supporters of the PLO.[46]

In the West Bank, Israel's military administration created a local Arab political structure, separate from that of the Arab elected officials, which it called "village leagues."[47] Its purpose, reported the U.S. Department of State, was to "transfer patronage and authority from elected and established Palestinian nationalist leaders whom Israel objects to as being supporters of the Palestine Liberation Organization." It gave the leagues arms and financial assistance.[48]

The government tried, said the State Department, "to interpose the Leagues as an intermediary between the inhabitants and the occupation authorities by refusal to accept requests for such services as the registration of births or marriages, building permits, bridge crossing permits, and family reunion applications without the participation of the local league." Village league members "often exacted fees for their services. Many West Bankers," the department reported, "complained that the Leagues' expanding activities undermine the elected Arab political structure."[49]

For its citizens who settled in the West Bank and Gaza Strip—numbering 65,000 and 2,700 respectively[50]—the government provided a separate system of government. It established "area councils" over groups of settlements.[51] To govern the settlers, the military governors issued military orders that repeated verbatim the texts of various Israeli laws. In this way the settlers were freed from the local law of the West Bank or Gaza Strip with respect to education, personal status, health, and labor. They gained a kind of extraterritoriality.[52] For most legal purposes Israeli settlers living in the West Bank or Gaza Strip were deemed in Israeli law to be residents of Israel,[53] rather than of the West Bank or Gaza Strip. This separation resulted in separate legal regimes for settlers and for Arabs. It also curtailed the power of the Arab municipal authorities. Arabs continued to function under the prior existing law and institutions—which meant Jordanian law and courts in the West Bank and Palestinian law and

courts in the Gaza Strip—except to the extent they were superseded by military orders and military courts.

For lawsuits between settlers the government created courts in the settlements, and it made the judgments of these courts enforceable in courts inside the 1949 armistice lines.[54] The government also authorized settlers to sue one another in courts inside the armistice lines.[55] Arab courts continued to function in the Gaza Strip and West Bank, but the settlers did not file there since the government provided non-Arab alternatives.[56] If an Arab wanted to sue a settler, the Arab courts would, in theory, have jurisdiction. But they had no enforcement mechanism to compel an appearance in court by a settler defendant.[57]

Arab police abstained from entering the settlements to investigate crime or make arrests.[58] In criminal matters the settlers were made subject to Israeli law and courts rather than to the local law and courts. Criminal cases against settlers are to date prosecuted either in Israeli courts within the 1949 armistice lines,[59] in settlement courts,[60] or, rarely, in Israeli military courts.[61] Arab courts still do not try settlers.[62] In a 1984 directive to West Bank prosecutors and judges the government ordered Arab courts not to try settlers:

> Reference is made to document No. 3/63 dated 11 January 1979, in which the legal advisor has interpreted the law on the West Bank whereby it is not possible to execute judgments from West Bank courts made against holders of Israeli identity cards who are living inside Israel (to include Jerusalem and its suburbs). . . . Therefore, . . . West Bank courts should not register any criminal case (to include traffic cases) against holders of Israeli identity cards unless written authorization is obtained from me.[63]

Settlers had been issued Israeli identity cards; thus, by this directive they were not to be tried in Arab courts. The exclusion of criminal jurisdiction over settlers left Arabs unprotected from physical attacks by settlers, which occurred with some frequency.[64] Israeli authorities rarely prosecuted the perpetrators of these attacks.[65]

The separation in applicable law and court jurisdiction between the settlers and the Arab populations of the West Bank and Gaza Strip has been characterized as "a form of legal apartheid,"[66] since the Apartheid Convention prohibits dividing a population on racial lines for administrative purposes.[67]

25

More Hewers of Wood:

Commerce, Agriculture, and Labor

Another such victory over the Romans, and we are undone.
—Pyrrhus, King of Epirus, Plutarch, *Lives*

The 1949 armistice lines cut the West Bank off from Mediterranean ports and separated the port of Gaza from its traditional hinterland in the area south of Jaffa.[1] The expulsion of the Palestine Arabs in 1948 left 150,000 refugees in the Gaza Strip and 400,000 in the West Bank. For Gaza that represented a doubling of its population, and it became one of the most densely populated areas in the world. Furthermore, history would prove that neither Gaza nor the West Bank could incorporate this influx into their economies successfully.

As in the Galilee in the early 1950s, the government's land confiscations in the West Bank and Gaza Strip radically altered their economies. "The taking of land for settlements and for military use in the occupied territories," said the U.S. Department of State, "strongly affected the lives of Arab residents." Many of them, it said, "had to leave farming to become day laborers."[2] They took jobs in Israeli settlements or inside the 1949 armistice lines.[3] By the 1980s one-third of the work force commuted to jobs inside the 1949 armistice lines.[4]

The government let employers pay these workers lower wages than they paid Israelis, and they paid 20–30 percent less to Arabs than they paid Israelis for similar work.[5] The Histadrut took 1 percent of the salary of these guest workers but did not admit them as members and did not provide them services.[6] Israel's National Insurance Law limited many employment-related benefits to residents of Israel.[7] This limitation excluded Gaza and West Bank guest workers.[8] By Israeli regulation they were required to cross back over the armi-

stice line by 1:00 A.M.[9] Therefore, they could not become residents of Israel.[10]

The National Insurance Law provides only three benefits to workers who are not Israeli residents—on-the-job injury compensation,[11] wages and severance pay given in the event of the bankruptcy of the employer,[12] and maternity payments to a worker or to the wife of a male worker. Maternity benefits, however, are conditioned on the birth taking place in Israel,[13] with the result that few West Bankers or Gazans receive them, since most women give birth in their home area.[14]

Other important benefits are conditioned on Israel residency —unemployment compensation,[15] off-the-job injury compensation,[16] care for a long-term illness,[17] compensation for lower limb dysfunction,[18] pension payable to survivors,[19] income support (where income falls below a stipulated minimum),[20] and days off for mourning and weddings.[21] Thus, the West Bank and Gaza guest workers are by law ineligible for these benefits.

As for old-age pensions, a West Banker or Gazan working inside the 1949 armistice lines receives only a "retirement pension"—which is quite small—but not the much larger "comprehensive pension" since that pension is conditioned on residence in Israel.[22] To qualify even for the retirement pension a West Banker or Gazan must work at least ten years.[23] This requirement excludes many West Bankers and Gazans since employers are not required to keep records of their employment.[24]

Even though the National Insurance Law limits important benefits to Israeli residents, nonresident workers are assessed wage deductions as if they were eligible to receive them.[25] Thus, West Bank and Gaza workers are assessed wage deductions to the same extent as resident workers.[26] This difference in treatment was characterized by a Hebrew University sociologist, Michael Shwartz, as an "apartheid practice."[27]

The government of Israel acknowledged that West Bank and Gaza workers are entitled to some return for that portion of their wage deductions for which they do not receive benefits. Therefore, it began to transfer a percentage of the deductions made from their salaries into a special fund.[28] It stated that it will turn these moneys over in the event of a political settlement for the West Bank and Gaza Strip.[29] It refused a request from Ephraim Sneh, head of Israel's civil administration in the West Bank, that it spend these moneys in the West Bank.[30]

Some West Bankers and Gazans working inside the 1949 armistice lines do not receive even those benefits ordinarily available to nonresidents. This is so because they contract for employment directly with Israeli employers, rather than through government labor exchanges.[31] Employers do not report the employment and thus do not make wage deductions for benefits. Employment is arranged in this fashion in part because employers avoid insurance deductions and in part because the workers avoid the Israeli income tax and the Histadrut representation fee.

Although Gaza and West Bank Arabs who work inside the 1949 armistice lines are not considered residents of Israel, the Knesset deemed Israeli settlers living in the Gaza Strip or the West Bank to be residents of Israel. Thus, whether these Israelis work inside the armistice lines or in the Gaza Strip or West Bank, they qualify for the benefits denied to the West Bank and Gaza Arabs.[32]

As it had done after 1948 in Arab-populated areas, the government of Israel adopted policies in the West Bank and Gaza Strip that had the effect of obstructing Arab industrial initiatives. It closed the thirty banks operating there, which limited access to capital for Arab entrepreneurs.[33] The lack of Arab banking facilities for credit and financial transactions hurt industrial development.[34] The government also limited the import by West Bank and Gaza industry of capital from the Arab countries.[35] Instead, Israeli banks began to operate in the Gaza Strip and West Bank, to the further detriment of Arab development.

In 1981 the government permitted the reopening of the Bank of Palestine in Gaza but prohibited it from dealing in non-Israeli currencies.[36] In 1986 it permitted another bank to open in Gaza[37] and allowed the Jordanian Amman-Cairo Bank to open one branch in Nablus in the West Bank. It imposed on these banks, however, close controls not used on the Israeli banks operating in the two areas.[38]

In economic planning Israeli officials took the lead.[39] The government did not let West Bank or Gaza Arabs establish any institutions to set economic policy[40] or to set tariffs that might protect local industry.[41] The government expanded West Bank roads, but largely for its own security needs[42]—such as a 1984 highway construction plan that called for highways linking Israeli settlements, but bypassing Arab towns.[43]

The government invested little in the Arab economy.[44] On the

contrary, it thwarted development projects that might make the economies of the territories more independent.[45] Uncertainty about the future political status and about the possibility of military decrees that might impede their work made Arab entrepreneurs view investment as hazardous.[46] The climate was not conducive to risk-taking.[47]

By an extensive system of control the government of Israel kept Arab industry from injuring Israeli production. Itzhak Rabin, who as defense minister was in charge of the West Bank and Gaza Strip, said his government tried to keep West Bank and Gaza industry from competing with Israeli industry.[48] In actual fact, the government directed Arab industry to make it complement Israeli industry. It encouraged production of goods that enjoyed a weak demand in the occupied territories and of goods that had a comparative advantage with the Israeli economy since Israel was the principal client. In industry it imposed production specialization through subcontracting by Israeli firms to Arab firms.[49] Subcontracting allowed Israeli firms, particularly in textile and confection, to use the cheaper Arab labor;[50] but it did not provide a stable base for the West Bank or Gaza Strip since subcontracting diminished during downswings in production.[51]

The government began to use the West Bank and Gaza as a protected market for Israeli manufactured goods. Through high tariffs and rigid policies of import licensing, it ensured the marketing in the West Bank and Gaza Strip of high-priced and low-quality Israeli products.[52] As a result, the West Bank and Gaza soon came to receive nearly all their imports from Israel.[53] At the same time a much lower percentage of their own production was exported to Israel because of quotas and other restrictions the Israeli government set.[54]

Functioning within the Israeli economy, West Bank and Gaza industry could not compete since Israeli industry enjoyed substantial government subsidies and credit.[55] It also had to compete with the production of Israeli settlements in the West Bank and Gaza, which, like Israeli industry, was subsidized by the government.[56] To make matters worse for Arab industry, the government gave Israeli industry financial incentives to invest in the West Bank and Gaza,[57] which led to the construction of six Israeli industrial parks in the West Bank; the World Zionist Organization's 1982 Plan of One Hundred Thousand Settlers projected seven more industrial parks;[58] and, finally, the government directed outside development aid away from sectors that might compete with Israeli producers.[59] In particular, it

made it difficult for voluntary economic-development agencies to bring in heavy equipment that might have helped Arab industry.[60]

A principal mechanism the military government devised for directing Arab industry into desired channels was to require a license for the establishment of any new business. As a matter of practice, it did not license new Arab businesses likely to compete with Israeli industry.[61] By various regulations the government restricted the construction of new factories.[62] For many years it denied a permit sought by Arab entrepreneurs to open a cement plant in Hebron and a citrus plant in Gaza.[63] These refusals to license new businesses moved the UN Economic and Social Council to call upon Israel "to facilitate the establishment of a cement plant in the occupied West Bank and a citrus plant in the occupied Gaza Strip."[64] The denial was apparently motivated by a desire to protect Israeli producers.[65]

A major industry in Gaza is fishing. The government undermined that industry by establishing zones in the Mediterranean Sea in which it did not permit Arab trawlers to fish,[66] while Israeli fishing vessels were allowed to fish in the same waters. It justified the regulations on the ground that guerrilla groups might use fishing boats to approach the Gaza coast. To keep the Gaza fishing industry from competing with Israel's, it restricted the sale inside the 1949 armistice lines of fish caught by Gaza fishing vessels.[67] Most Gaza fishermen went out of business as a result of these restrictions.[68]

Similarly in agriculture, the government of Israel oriented West Bank and Gaza production to meet the needs of Israel's economy.[69] To prevent competition with Israeli farmers, it prohibited the production of melons in the West Bank and limited the production of tomatoes and cucumbers in the West Bank and the planting of citrus trees in Gaza.[70] Israel's controls on the export to Israel of West Bank and Gaza agricultural products, according to the U.S. Department of State, "restrict the market opportunities" of West Bank and Gaza farmers.[71] The minister of agriculture prohibited or restricted the sale inside the 1949 armistice lines of major West Bank and Gaza products, like grapes and dates, to forestall competition with Israeli producers.[72] Israel's agricultural officer for the Gaza Strip explained that the government erected "a legislative structure and mechanism of separation" to prevent the free marketing inside the 1949 armistice lines of produce from the territories.[73] To enforce the prohibitions, agricul-

tural inspectors on occasion confiscated fruits and vegetables being brought by West Bank farmers into Jerusalem, a major market.[74] The government imposed customs duties to prevent entry of perishable food items.[75] It undermined the citrus industry of the Gaza Strip by imposing a high tariff on Gaza citrus exports,[76] by setting administrative restrictions on exports,[77] and by mandating taxes that favored Israeli producers.[78] It limited Gaza citrus exports to other countries.[79]

At the same time, said Israel's agricultural officer for the Gaza Strip, "the leftover produce from Israel" was "flooding the territories, without regard for the interests of local agriculture."[80] The government did not regulate the marketing of Israeli produce on the West Bank.[81] West Bank farmers protested the low market prices for vegetables, blaming Israeli produce that entered the West Bank duty-free.[82]

The aquifer underlying the hilly West Bank contains most of the water available underground on the coastal plain, which is inside the 1949 armistice lines. Control of the West Bank, therefore, gave Israel the ability to assure its own water supply. The government gave control of the West Bank and Gaza Strip water to the National Water Authority, Mekorot, so this water could be managed according to Israel's needs. The government permitted West Bank Arabs to drill new wells only for domestic consumption,[83] denying their requests to drill for irrigation.[84] It placed meters on Palestinian wells to check daily consumption.[85]

The government did allow, however, the drilling of deep wells to serve Israeli users inside the 1949 armistice lines or in West Bank settlements. Many of these wells were drilled near shallower Arab wells, thereby drying them up.[86] This deprived Arab farmers of water and put many of them out of business.[87] Arab farmers were forced to let formerly productive land go unused because water, previously available for irrigation, was siphoned off by Israeli wells.[88] Israeli settlers came to use water far out of proportion to their numbers in the West Bank, taking about 20 percent of the water consumed while constituting 3 percent of the population.[89] The UN General Assembly, referring to this situation, called on Israel to end its "illegal exploitation of the natural wealth, resources and population of the occupied territories."[90]

In the Gaza Strip as well the government prohibited the digging of new wells by Arabs but let Israeli settlers do so.[91] It allowed these

wells to be dug deeper than Arab wells, both to supply the settlements and to send the water inside the 1949 armistice lines.[92] According to a UN study, the settlements "use the limited water resources of the West Bank at the expense of Arab farmers." There was, according to the study, "an expansion of the Israeli water control system, in order to serve the requirements of agricultural projects established by the Jewish settlements." The government "restricted the water consumption of the Palestinians in the West Bank and the Gaza Strip in order to make a larger amount of water available for Israeli consumption."[93]

In the West Bank and Gaza Strip ownership by Arabs of cooking ranges, motor vehicles, refrigerators, washing machines, and television sets increased after Israel began its occupation. Government figures showed an 11 percent increase in per capita income up to 1980, a 9 percent increase in private demand, and an annual average 13 percent increase in the gross national product.[94] The government cited these increases as showing that the occupation benefited the Arabs economically. These consumption gains did not come, however, from economic development in the West Bank or Gaza Strip. They resulted in large part from the employment of Gazans and West Bankers in the Persian Gulf and inside the 1949 armistice lines.[95] The purchases benefited Israel's economy but did not build up the economies of the West Bank or Gaza.

Israel's economic policies in the West Bank and Gaza Strip were similar, analysts charged, to those followed by European powers in their Third World colonies.[96] For the West Bank and Gaza Strip, one study concluded, Israel's economic policy led to a migratory labor situation, stagnated production, a lack of capital formation, minimal physical infrastructure, a near total dependence on Israel's economy, a brain drain of professionals, the emigration of entrepreneurs, the export of capital, and the proletarianization of the farm population.[97]

The argument that the consumption benefits justified the occupation carried a "strong element of the kind of economic bribery that was more or less the standard rationale for colonialism," said the analyst John Dunne.[98] A similar argument was used, noted the economist Sarah Graham-Brown, to justify economic policies in the white settler states of southern Africa.[99]

By the Sword: The Palestine Arabs' Claim of a Right to Resist

But indeed if any do help
And defend themselves
After a wrong [done]
To them, against such
There is no cause
Of blame.
—*Holy Quran*, xlii, 41

Defense Minister Dayan said after the 1967 war that the Arabs do not "hate the Jews for personal, religious, or racial reasons. They consider us—and justly, from their point of view—as Westerners, foreigners, invaders who seized an Arab country to turn it into a Jewish state. Therefore, we are obliged to gain our objectives against the will of the Arabs, and we must live in a state of permanent war."[1]

The 1967 war provided an impetus for the growth of the Fatah organization. The defeat of the Arab states convinced many Palestine Arabs that reliance on the Arab states was fruitless. First, Fatah tried to organize a structure of resistance in the West Bank. But by late 1967 the government drove it out.[2] Fatah did, however, attract new recruits in Jordan and from there it raided into the West Bank against Israeli targets.

Most of Fatah's attacks were against military posts, but civilians were killed in these raids and some operations were aimed at civilian targets.[3] In response, Israel made reprisal attacks against Fatah camps in Jordan, often killing large numbers of people, most of them unconnected with Fatah. The Security Council, as before the 1967 war, condemned Israel for these attacks. Denouncing a 1968 Israeli attack on Karameh, Jordan, it deplored the "loss of life and heavy damage to property."[4] It condemned a 1968 raid by Israel on Fatah

bases near the Jordanian town of Es-Salt, again deploring the "loss of life and heavy damage to property." It said that Israel's "premeditated and repeated military attacks endanger the maintenance of the peace."[5]

In the Security Council Pakistan said that Israel's 1967 aggression deprived it of the right to use any force against Fatah, since it was protecting the territory it had taken unlawfully. It denied that Israel, as "the perpetrator of an aggression," had a right to force "equal to that of the victim of that aggression."[6] France objected to Israel's claim of a need to use force in reprisal for "the security of the territory and population" under its jurisdiction because "we cannot recognise that jurisdiction, which was established through occupation."[7]

Fatah took the same position, justifying its raids as a manifestation of the resistance of a people to armed occupation of its territory. The occupier, it declared, has no right of reprisal.[8] France, in criticizing Israel for one reprisal raid, called the Fatah attacks into the West Bank the "almost inevitable consequence of military occupation."[9] Pakistan said that the "popular resistance" was part of the "legitimate struggle of the people of Palestine for a return in freedom to their own homeland."[10]

During these same years the Security Council was asked to address similar issues arising in Africa. Portugal still held the colonies of Angola, Mozambique, and Guinea-Bissau, and guerrilla groups in all three tried to overthrow it. Guerrillas were based in neighboring states, and Portuguese forces frequently mounted raids into those states in search of the guerrillas. In handling these cases the council in each instance found colonial states in Africa were acting unlawfully when they made cross-border reprisal raids against guerrillas seeking independence.[11] It condemned Portugal's attacks into Zambia,[12] Senegal,[13] and Guinea.[14] The council condemned Portugal in these cases, despite allegations of mutual violations of the territorial integrity of the parties concerned.[15] Therefore, it did not put the guerrilla forces and the colonial state on a footing of equality but recognized a superior right to force on the part of the guerrilla forces. It criticized Portugal not only for attacking but also for failing to respect the right to self-determination.[16] It rejected the claim of Portugal of a right to retaliate to keep its colonies under its control.[17]

In the 1980s South Africa mounted raids into Botswana in search of guerrillas seeking to overthrow the apartheid system of South

Africa. The Security Council condemned South Africa for an "unprovoked and unwarranted military attack" and affirmed Botswana's right to give sanctuary to victims of apartheid, the circumstance South Africa asserted justified the raids.[18] South Africa also made raids into Angola to fight forces of the South-West Africa (Namibia) People's Organization (SWAPO), which sought to drive South Africa out of Namibia. South Africa, it was generally recognized, held Namibia in violation of the self-determination right of the people of Namibia. The Security Council condemned South Africa's attacks into Angola.[19]

In considering reprisal attacks by Israel, the council did not condemn the guerrilla organizations or the states from which they operated. Its evident rationale was that the Arab refugees were justified because they sought self-determination. The Security Council, in finding the Fatah attacks lawful, dealt with them as attacks by a colonized people entitled to the right of self-determination.[20]

When self-determination is denied, the injured entity is the people affected.[21] The Security Council's practice in the cases just mentioned suggests that when all else fails a people denied self-determination may resort to forcible self-help to remove from its territory the state holding it in dependence. The Palestine National Covenant viewed the force that might be used to achieve Palestinian self-determination as self-defense. "The liberation of Palestine from an international viewpoint," it declared, "is a defensive act necessitated by the demands of self defense."[22] In an International Court of Justice case involving Namibia, Judge Fouad Ammoun shared that view. Citing the French national movement under Nazi German occupation, and the Polish, Czech, and Slovak peoples under the Austro-Hungarian Empire, he said that a people has a right to armed struggle to achieve self-determination. "In law, the legitimacy of the peoples' struggle cannot be in any doubt," he said, "for it follows from the right of self-defence, inherent in human nature, which is confirmed by Article 51 of the United Nations Charter."[23] Ammoun found South Africa's presence in Namibia to constitute aggression since it was maintained against the will of the population, even though South Africa came into control by a mandate of the League of Nations.[24]

This theory that colonialism constitutes continuing aggression

has been opposed by other authorities.[25] Julius Stone argued that colonialism is not "illegal per se,"[26] and Louis Henkin said that even if colonialism is illegal, the presence of a colonial administration is not an armed attack within the meaning of Article 51 of the UN Charter.[27] John Norton Moore suggested that, when asserted by the Palestine Arabs, the theory of continuing aggression is merely "a rhetorical substitution of an armed attack claim in place of an underlying self-determination claim" and that the charter's prohibition against force "does not contain an exception permitting unilateral determination of denial of self-determination as a basis for lawful use of major coercion."[28]

Moore's criticism casts light on a difficulty in the theory that a people denied self-determination may use force because, according to Moore, the people may "unilaterally" decide it has been denied self-determination. While that may be a problem in many instances, it would not seem to be so in the case of the Palestine Arabs. The community of states has repeatedly affirmed the right of the Palestine Arabs to self-determination, so their claim of a denial of self-determination cannot be said to be "unilateral."[29]

Another objection to the view that colonialism constitutes a continuing attack is that the taking was lawful at the time it occurred since until the twentieth century forcible seizure of territory as colonies was permitted.[30] While that may be true for some peoples denied the right to self-determination, it is not true of the Palestine Arabs. Their territory was taken from them, as already indicated, after international law prohibited acquisition of colonies by force. Thus, the taking was unlawful from the outset.

Another theory has been suggested that would legitimate anticolonial force. The UN Charter defined unlawful force as that used against "the territorial integrity or political independence of any state,"[31] which implied force against another state. When a dependent people uses force against a colonizer, argued Kadar Asmal, it is not using force against another state, but rather against an entity that occupies its own territory.[32]

In its 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, the General Assembly said that "all armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully

and freely their right to complete independence, and the integrity of their national territory shall be respected."[33] That resolution, by referring to the territory of a dependent people as "their national territory," seemed to follow the theory that anticolonial force is not force against another state. The resolution implied that a dependent people may lawfully use force to displace a colonizer.

India relied on this theory in 1961 after it used force to remove Portugal from the enclave of Goa, on the Indian coast. Portugal had held Goa as a colony for four hundred years. India claimed the right to use force to take Goa. Portugal complained to the Security Council that India's action was aggression.[34] India replied that there was "no legal frontier" between India and Goa, and it said there could be "no question of aggression against your own frontier, or against your own people, whom you want to liberate."[35] In the Security Council discussion, socialist and Third World states sided with India, while Western states sided with Portugal.[36]

In later years the General Assembly took the position that a dependent people may lawfully use force to achieve independence, though it did not specify which theory it was following. In 1965 the General Assembly recognized "the legitimacy of the struggle by the peoples under colonial rule to exercise their right to self-determination and independence."[37] In 1970, in its Declaration on Friendly Relations, the General Assembly, while not explicitly asserting a right to use force to overthrow a colonizer,[38] strongly implied such a right by outlawing force that would deprive a people of self-determination. "Every state," it declared, "has the duty to refrain from any forcible action which deprives peoples . . . of their right to self-determination and freedom and independence." The assembly referred to their "resistance to such forcible action in pursuit of the exercise of their right to self-determination." The declaration authorized even action that might eliminate a state by saying that nothing in the declaration "shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples" and "thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."[39] A state not "possessed of a

government representing the whole people . . . without distinction as to race, creed or colour" is not protected. Later in 1970 the assembly affirmed the right of "colonial peoples and peoples under alien domination" to "exercise their right to self-determination and independence by all the necessary means at their disposal."[40]

When it defined the concept of aggression in 1974 the assembly made it clear that anticolonial force was not to be deemed aggression. In a special proviso it said that "nothing in this Definition" could "in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right." The proviso referred back to the 1970 Declaration on Friendly Relations to indicate it meant "particularly peoples under colonial and racist regimes or other forms of alien domination." It mentioned specifically "the right of these peoples to struggle" to end the domination, and to "seek and receive support" for that purpose, "in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration."[41] Though Julius Stone argued that this proviso does not reflect customary law,[42] the General Assembly adopted the definition of aggression without a vote. Tom Farer called it a "global consensus,"[43] and it would seem to reflect the views of the overwhelming majority of states.

The assembly followed this approach in resolutions relating to Palestine. In one resolution it upheld "the legality of the peoples' struggle for self-determination and liberation from colonial and foreign domination and alien subjugation, notably in southern Africa and in particular that of the people of Zimbabwe, Namibia, Angola, Mozambique and Guinea (Bissau), as well as the Palestinian people, by all available means consistent with the Charter of the United Nations."[44] The General Assembly characterized Israel's occupation of the West Bank and Gaza Strip as a denial of self-determination and hence a "serious and increasing threat to international peace and security." It felt the Arabs there were under foreign domination and the struggle for independence by such peoples, including armed struggle, is legitimate.[45]

The Organization of African Unity found a "right of the people of Palestine to continue their struggle in all political and military forms as well as the use of all means to liberate their occupied territory and to recover their inalienable national rights, particularly, their right to return to their homeland, the exercise of their right to

self-determination and to establish an independent State in their territory."[46]

Apart from the right of self-determination, the guerrilla raids were arguably justifiable on the ground that the guerrilla groups were attempting to retake territory gained by aggression. Force used for that purpose is considered by some authorities to be aggression.[47] If territory taken by aggression may be recaptured by force, argued Oscar Schachter, "self-defense would sanction armed attacks for countless prior acts of aggression and conquest. It would completely swallow up the basic rule against using force."[48] "Re-caption," said Derek Bowett, "is unlawful."[49]

But if a state recaptures its own territory by force, "this is not an employment of force contrary to the provisions of Article 2(4) of the Charter," argued R. Y. Jennings in reply. "It cannot be force used against the territorial integrity or political independence of another State because the actor State is merely occupying its own territory."[50] Jennings relied on the UN Charter definition of aggression as force used against the territorial integrity or political independence of a state. When Egypt and Syria attacked Israel in October 1973 to recover the Sinai Peninsula and Golan Heights, which Israel took from them in 1967, the Security Council did not condemn them.[51]

In the late 1960s the Popular Front for the Liberation of Palestine, one of the constituent groups of the Palestine Liberation Organization, undertook airplane hijacking as a method of bringing attention to the denial of self-determination to the Palestine Arabs.[52] After it destroyed an Israeli government airliner at the Athens airport, the IDF attacked the Beirut airport in response and destroyed thirteen civilian airliners. The Security Council condemned Israel for "premeditated military action."[53]

In its reprisal raids the IDF began to use air strikes rather than ground troops. These air attacks brought heavy civilian casualties in the villages and refugee camps where guerrillas were based.[54] The Security Council condemned a 1969 air attack on Fatah bases near El-Salt, condemning the "recent premeditated air attacks launched by Israel on Jordanian villages and populated areas."[55] Following a 1969 air attack into Lebanon, the council condemned the "premeditated air attack by Israel on villages in southern Lebanon in

violation of its obligations under the Charter" as acts of "military reprisal."[56]

In airplane hijackings and other attacks in Israel and elsewhere various constituent groups of the Palestine Liberation Organization attacked civilians. Such use of force was unlawful, as recognized by the General Assembly in its 1985 resolution, "Measures to Prevent International Terrorism."[57] Under the rules of warfare, a state in waging war—even in self-defense—must refrain from attacking civilians. Similarly, a national liberation movement in conducting warfare to achieve self-determination must follow the same rule.

That rule has been viewed as harsh by many national liberation movements. They typically do not have at their command military resources equal to those of the state against which they are fighting. To hold them to the same rules of warfare works to their disadvantage. As viewed by many Palestine Arabs, violence against civilians, particularly against Israeli civilians, is justified by the violence Israel has used against Palestinian civilians, particularly its bombing raids on Palestinian refugee camps in Lebanon. Through these raids, the IDF killed far more civilians than did the Palestine Arabs. A poll taken among Palestine Arabs in the West Bank in 1986 showed 87.6 percent support for acts of violence against civilians by Palestinian commando teams inside the 1949 armistice lines.[58]

Terrorist acts are a product of frustration over inability to gain self-determination by other means. Terrorism is "not an aberration of demented personalities," according to David Shipler, writing about the Palestine Arabs, but "an integral part of an existing subculture, encouraged and supported and approved by the mainstream of the society that forms the terrorist's reference points."[59] While the frustration has a solid basis, violence against civilians is not justified by the denial of self-determination or by violence against civilians by the other side.

The General Assembly studied terrorist acts in the 1970s and concluded that they are often undertaken as a result of the inability of a dependent people to attain self-determination by political or legitimate military means.[60] In order to eliminate "the causes and the problem of international terrorism," the United Nations should "pay special attention to all situations, including, inter alia, colonialism, racism and situations involving alien occupation, that may give rise to international terrorism and may endanger international peace and

security, with a view to the application, where feasible and necessary, of the relevant provisions of the Charter of the United Nations, including Chapter VII thereof."[61] Chapter 7 of the charter provides for economic and military sanctions to be imposed by the Security Council against a state that threatens the peace. By referring to Chapter 7 the assembly was suggesting that the Security Council mandate collective coercive measures to terminate the denial of self-determination.

27

Guns and Stones: Resistance by the Palestine Arabs to Occupation

The first priority is to use force, might, beatings.
—Yitzhak Rabin, Minister of Defense, 1988

In 1970 Jordan expelled the Palestine Liberation Organization from its borders, and the PLO moved its base of operation to Lebanon. It operated primarily in southern Lebanon where many Palestine Arabs, expelled from northern Palestine in 1948, lived in refugee camps. From southern Lebanon the PLO mounted raids into Israel. Israel initiated reprisals, leading to more Security Council condemnations.[1] In 1970 Israel undertook a substantial invasion into Lebanese territory. The council demanded the "immediate withdrawal of all Israeli armed forces from Lebanese territory"[2] and condemned Israel for "its premeditated military action." It deplored the "loss of life and damage to property."[3] When the IDF remained in place, the council repeated its demand for withdrawal.[4]

In 1972, as raids by the PLO continued, Israel again sent troops into Lebanon. The Security Council demanded "that Israel immediately desist" from "any ground and air military action against Lebanon" and that it "forthwith withdraw all its military forces from Lebanese territory."[5] The council, "while profoundly deploring all acts of violence," condemned "the repeated attacks of Israeli forces on Lebanese territory and population."[6]

In May 1972 a group sent by the Popular Front for the Liberation of Palestine took a commercial flight to Tel Aviv and in the airport customs hall they opened fire, killing twenty-five persons and wounding seventy-two others.[7] The Black September organization, affiliated with the PLO, kidnapped eleven Israeli athletes in September at the Olympic Games in Munich. In trying to free the athletes, German police shot and killed them, along with four of the captors.[8] The IDF

responded with air strikes into Syria, in which it killed several hundred civilians.[9] All of these events led to the formation of new guerrilla groups, and this in turn led to increased numbers of hijackings by them.[10]

In 1973 the Security Council condemned Israel's "repeated" attacks into Lebanon and its "violation of Lebanon's territorial integrity and sovereignty." It called on Israel to "desist forthwith from all military attacks on Lebanon."[11] In 1974 branches of the PLO raided the Israeli town of Qiryat Shmona where they took eighteen civilians as hostages, killing them and themselves when confronted.[12] They raided the town of Maalot as well where they took as hostages ninety high school students, twenty of whom were killed when government forces tried to free them.[13]

In March 1978, following a series of guerrilla raids into Israel from Lebanon, Israel invaded Lebanon in pursuit of the PLO. It occupied southern Lebanon, killing 2,000, mostly Lebanese and Palestinian civilians, and causing 200,000 to flee their homes. It established a seven-mile-wide "security belt," which it held for three months. When it withdrew, it left in charge a Lebanese force it had organized and financed.[14] The council called on Israel "immediately to cease its military action against Lebanese territorial integrity" and to "withdraw forthwith its forces from all Lebanese territory."[15]

In July 1981 Israel and the PLO concluded an agreement by which the PLO agreed not to launch an attack into Israel. As a result, the PLO did not attack Israel from mid-1981 to mid-1982.[16] But in June 1982 Israel again invaded Lebanon, and it used aerial bombardment to destroy entire camps of Palestine Arab refugees.[17] By these means Israel killed 20,000 persons, mostly civilians,[18] and while it occupied southern Lebanon it incarcerated 15,000 persons, according to the International Committee of the Red Cross. The IDF continued north to Beirut, where it forced the PLO out of Lebanon.

Israel claimed self-defense for its invasion, but the lack of PLO attacks into Israel during the previous year made that claim dubious. By invading Lebanon, Israel evidently sought to destroy the extensive Palestinian military and administrative infrastructure in Lebanon[19] and, by removing the PLO, to convince the Arabs of the Gaza Strip and West Bank that they would get no help from the PLO.[20] In the United States Harold Saunders, a former assistant secretary of state for Near Eastern and South Asian affairs, said that Israel aimed,

by the invasion, "to destroy once and for all any hope among the people of the West Bank and Gaza that the process of shaping the Palestinian people into a nation could succeed." It was designed, he continued, "to break any final resistance to total Israeli control and to pave the way for making life so difficult for those who valued their freedom and political self-expression that they would eventually leave for Jordan."[21]

The Security Council demanded "that Israel withdraw all its military forces forthwith and unconditionally to the internationally recognized boundaries of Lebanon."[22] But the IDF continued its attacks in Beirut, destroying entire neighborhoods by aerial bombardment, and blocking food and medical supplies from reaching victims of the bombardment. The council demanded "that the Government of Israel lift immediately the blockade of the city of Beirut in order to permit the dispatch of supplies to meet the urgent needs of the civilian population."[23] In Beirut the IDF allowed militia of a Lebanese faction hostile to the PLO to enter the refugee camps of Sabra and Shatilla, where the militia killed a number of civilians variously estimated from 300 to 3500.[24] The Security Council and General Assembly condemned the killings as a "criminal massacre of Palestinian civilians," and the assembly called them "an act of genocide."[25] Israel subsequently withdrew from most of Lebanon but kept troops in a strip of southern Lebanon.

In 1985 Israel's air force attacked the headquarters of the PLO in a suburb of Tunis, Tunisia, resulting in the deaths of sixty-eight persons in the vicinity. The Security Council said the attack was directed against "an exclusively residential urban area which traditionally has been home to Tunisian families and a small number of Palestinian civilians who had to flee from Lebanon following the invasion of that country by the Israeli army."[26]

Inside the West Bank and Gaza Strip the IDF met civilian resistance to its occupation. The Palestine Arabs pressed for political rights. They held street demonstrations, often resulting in violence against the IDF troops and violent reaction from them. Despite Israel's ban on political activity, underground affiliates of the various PLO factions organized supporters in the two areas. Arrest on security-related charges became a rite of passage for youths.

Arabs detained on security-related charges frequently complained

that interrogators used force to convince them to confess. In 1987 a government commission found that security officials had frequently used physical force to extract confessions. When called to testify in court about the confession, the interrogators would routinely deny having used force.[27] The commission reported interviewing "service personnel who felt that the judges were part of the game," meaning that judges were aware that security service interrogators were lying when they denied having used torture.[28] The commission criticized the interrogators for giving false testimony but ruled that in the interrogation of persons suspected of security-related offenses "the employment of moderate physical pressure cannot be avoided." The usual means of investigation was deemed inadequate because the public in the West Bank or Gaza Strip was unlikely to cooperate with authorities to report crime.[29] The commission did not define in public documents what "physical pressure" was to be permitted but drafted secret guidelines to set limits.[30] The cabinet endorsed the commission's report, thereby authorizing interrogators to use moderate physical force against suspects.[31]

To thwart resistance the government expelled hundreds of persons, primarily those it considered potential leaders.[32] From Jerusalem it expelled civic leaders who opposed the annexation of Jerusalem.[33] Ariel Sharon, as defense minister, threatened to expel large numbers of West Bank and Gaza Strip residents. He said that "the Palestinians should not forget 1948."[34]

The government used the Defense (Emergency) Regulations to detain persons without charge,[35] to impose curfews on towns, to demolish houses of persons suspected of offenses, and to prohibit public demonstrations, artwork, and other nationalist expression.[36] One Arab woman was put on trial in an IDF court for hanging a map of Palestine in her private office,[37] and an IDF court convicted Arabs for singing nationalist songs at a wedding.[38]

In addition to the regulations, the military governments of the Gaza Strip and the West Bank issued local orders to suppress nationalism. An order titled Prohibition of Incitement and Adverse Propaganda punished anyone who tried "whether verbally or in any other manner to influence public opinion . . . in a manner which might endanger public security or order." The order required a permit for "a march of ten or more people together; or the assembling for the purpose of marching together from one place to another for a political

purpose; or for a matter which can be interpreted as a political matter whether or not they were in fact walking and whether or not they had congregated." Violation was punishable by a ten-year imprisonment.[39]

Arabs challenged some of the military orders in court. The Supreme Court of Israel gave military commanders great latitude by interpreting "military necessity" to include "strategic as well as tactical security considerations."[40] The Supreme Court upheld all challenged military orders, with one exception. In 1987 it ruled invalid Military Order 1164 of February 25, 1986, which gave the military governor power to appoint the executive board of a lawyers' union on the West Bank. The court said that the union had the right to elect its own board.[41]

Much of Israel's suppression activity violated the Geneva Convention Relative to the Treatment of Civilian Persons in Time of War. Article 49 stated: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." As already indicated, Article 49 prohibits the transfer of population into occupied territory, but it also prohibits the expulsion of inhabitants from occupied territory. Israel's Supreme Court ruled, however, that Article 49 prohibits only mass deportations for purposes of forced labor or extermination and, therefore, does not prohibit Israel's deportations of individuals or small groups, done for punitive purposes.[42] The government of Israel took that view as well,[43] though it was rejected by other states.[44]

The convention also protects property and forbids penalties imposed on groups or communities as opposed to individual perpetrators. Thus, the punitive demolition of the houses occupied by persons suspected of violent acts violated the convention. The curfews also represented a penalty taken against a group for the acts of an individual. In addition, the detention of persons without charge violated the convention. From early in the occupation, the UN General Assembly regularly criticized Israel for these violations.[45]

As Israel's occupation of the West Bank and Gaza Strip began its third decade, the situation of the Palestine Arabs there became increasingly difficult. They had been deprived for twenty years of any

political role. Their land was being taken at a rate that presaged a nearly total dispossession, as had occurred inside the 1949 armistice lines. Israel's virtual destruction of the West Bank and Gaza economies gave Arab youth little future. Young people who acquired an education were unable to find positions commensurate with their qualifications.

In December 1987 a demonstration in Gaza City developed into rioting through the Gaza Strip and the West Bank. Merchants closed their businesses in civil resistance against the occupation; local committees began to provide basic services, and West Bank and Gaza residents reduced their purchases of Israeli-made goods; many West Bank and Gaza residents who worked inside the armistice lines did not go to their jobs; and an underground leadership emerged to direct the campaign, which was called *intifada* (uprising).[46] Residents held street demonstrations, and these often developed into serious confrontations with the IDF. Youths threw stones at the soldiers, and the soldiers beat and shot at the youths.

The UN Human Rights Commission saw this use of force by the Palestine Arabs against Israel as lawful. The commission found a "right of the Palestinian people to regain their rights by all means in accordance with the purposes and principles of the Charter of the United Nations and with relevant United Nations resolutions" and said that "the uprising of the Palestinian people against the Israeli occupation since 8 December 1987 is a form of legitimate resistance."[47]

The government responded quickly and harshly to suppress the uprising. The IDF arrested several thousand Palestine Arabs, some on specific charges, but most under the administrative detention procedures that did not require a criminal charge. To house the prisoners, it opened a major new prison camp and expanded others. The IDF reacted to demonstrations with live fire from high-velocity military weapons, causing many deaths. The UN Security Council "strongly deplored" the "opening of fire by the Israeli army, resulting in the killing and wounding of defenseless Palestinian civilians."[48]

In reaction to the international criticism of the shootings—in particular from the United States[49]—the government announced a policy of summary physical beatings to be administered by the IDF at the site of demonstrations.[50] Defense Minister Itzhak Rabin said that the purpose was to instill fear in the population.[51] Implementing this policy, IDF soldiers broke the hands or arms of many demonstra-

tors with methodically directed blows, according to reports by many physicians. In addition to beating persons at the site of demonstrations, the IDF rounded up at their homes youths living near the scene of confrontations, took them to remote areas, and beat them. The uprising continued into a second year, and shooting deaths of Arabs by the IDF continued, the number of fatalities exceeding five hundred.

In trying to suppress the uprising the IDF used many of the same tactics employed in the West Bank and Gaza Strip since 1967 to suppress resistance, but it applied them more rigorously. It imposed curfews on localities of demonstrations, extending at times for weeks. With some curfews it prevented residents from leaving their houses, while with others it let them circulate locally but prohibited them from leaving their towns. The curfews kept farmers in some areas from harvesting crops that were rotting in their fields and kept Palestine Arabs from getting basic provisions. The UN Relief and Works Agency reported that IDF soldiers were seen confiscating food from Palestine Arabs who broke the curfew to take food to others, and the soldiers then destroyed the food on the spot.[52]

Soon after the uprising started the government began to expel persons it considered uprising leaders. The United States protested these expulsions as a violation of Article 49 of the Geneva Convention,[53] as did the European Economic Community[54] and the UN Security Council.[55] The United States, explaining its vote in the Security Council, said that Article 49 prohibits all expulsions of residents of occupied territory.[56]

In response to the desire for independence that came out of the uprising, Jordan renounced its claim to the West Bank. The Palestine Arabs began to lay plans for establishing an independent West Bank–Gaza state. In reaction, Israel banned organizations deemed to be promoting the declaration of statehood. These were the same organizations that provided many basic services to the population during the uprising. It closed schools and universities, and when teachers and parents organized classes for children outside regular buildings, it prohibited them.

Many of the methods Israel used to suppress the uprising were criticized by UN bodies as contrary to the Palestinians' right to self-determination, to their rights under the law of belligerent occupation, and to human rights norms. The situation led the United States, which had in earlier years been mild in its criticism of Israel's occu-

pation practices, to issue a strong condemnation of many of Israel's policies.[57] The UN Human Rights Commission, using the Geneva Convention's provision that certain violations of humanitarian law are "grave breaches" meriting criminal punishment for perpetrators, found a number of Israel's practices during the uprising to constitute "war crimes." It included physical and psychological torture of Palestinian detainees and their subjection to improper and inhuman treatment; the imposition of collective punishment on towns, villages, and camps; the administrative detention of thousands of Palestinians; the expulsion of Palestinian citizens; the confiscation of Palestinian property; and the raiding and demolition of Palestinian houses.[58]



Part Five

Resolution of the Palestine-Israel Conflict



To Make a People Whole:

Responsibility for Wrongs in Palestine

The blame is only
Against those who oppress
Men with wrong-doing
And insolently transgress
Beyond bounds through the land,
Defying rights and justice:
For such there will be
A Penalty grievous.
—*Holy Quran*, xlii, 42

A state which violates rights is required under international law to restore the situation as it was before the illegal act.[1] Restoration must, "as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed." If it is impossible to restore the prior situation, a state must compensate, typically by a money payment.[2]

The dispossession of a people from its land, followed by decades as refugees, is a wrong that must be recompensed. Having deprived the Palestine Arabs of their territory, Israel must, to the extent feasible, restore the preexisting situation. "Can it be," asked Judge Mohammed Bedjaoui, that these "repeated acts of theft and violence" have "conferred some right on those who committed them?" If this is so, he said, "international law has given its sanction to such practices as housebreaking, theft, conspiracy, and assassination."[3]

The duty to restore the preexisting situation requires Israel to repatriate the Arabs it dispossessed. This means allowing them to return to their original areas. Not only the Arabs who left Palestine but the substantial numbers who took refuge in 1948 in the Gaza

Strip and West Bank have a right to return. Nearly half of Gaza's population and about one third of the West Bank's population are 1948 refugees. The UN General Assembly said in December 1948 that the Arab refugees "wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date."[4] Ruth Lapidoth argued that this resolution called for repatriation only as part of an overall settlement.[5] The resolution also called, to be sure, for an overall settlement, but did not make repatriation conditional on a settlement. Subsequent assembly resolutions calling on Israel to repatriate the Palestine Arabs did not mention an overall settlement.[6] The UN Commission on Human Rights found a "right of the Palestinians to return to their homeland Palestine and their property, from which they have been uprooted by force."[7]

The Palestine Arabs, as a people, are entitled to return to Palestine. In addition, as individuals, Palestine Arabs have a right to return, under international human rights law. The Universal Declaration of Human Rights states that anyone dispossessed has a right "to return to his country."[8] The International Covenant on Civil and Political Rights states that "no one shall be arbitrarily deprived of the right to enter his own country."[9] The three regional human rights treaties contain similar provisions. The American Convention on Human Rights states that "no one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it."[10] The African Charter on Human and Peoples' Rights states that "every individual" is entitled "to return to his country."[11] The European Convention for the Protection of Human Rights and Fundamental Freedoms states that "no one shall be deprived of the right to enter the territory of the State of which he is a national."[12] There is, thus, a human right enjoyed by an individual who is outside her or his country to return to it.[13]

Lapidoth argued, however, that the Palestine Arabs have no right under human rights law to return to Palestine, since they have never been citizens of Israel.[14] This argument is based on the fact that neither the 1948 refugees nor the 1967 refugees were citizens of Israel. But the 1948 refugees were citizens of Palestine, and the 1967 refugees were citizens of Jordan, which de facto ruled that portion of Palestine at the time. The fact Israel established a new state in Palestine does not defeat the right of return.

It has been argued that, regardless of Israel's wrongs against the Palestine Arabs, only current populations need be considered in determining claims to territory, and Israel should not be required to restore all Arab rights. According to John Norton Moore, "the starting place for self-determination is most meaningfully the demands and expectations of all of the people living in an area now, not merely the descendants of some group that at some time in the past were the principal inhabitants. This would include approximately two and one-half million Jews already organized in a separate Jewish state."[15] That approach negates the right to self-determination. If a population is deemed to be deprived of rights after it has been expelled, then self-determination and territorial rights have little meaning.

A large-scale return would clearly be disruptive, but a gradual return of a certain number per year over an extended period would not. Israel has maintained since 1948 that it has no room to accommodate returning Palestine Arabs. Yet it continued its efforts to attract Jews to Israel. Through arrangements with the Soviet government, it tried to prevent Jews emigrating from the USSR on Israel visas in the 1980s from going to a country other than Israel.[16] Thus, it would seem that it believes it has room for additional population.

Repatriation of the Palestine Arabs is complicated by the fact that the government brought Jews into Israel to replace the dispossessed Arabs. As already indicated, it destroyed and built over many Arab villages and gave confiscated land to kibbutzim and moshavim. The government gave Arab land and businesses to others, though it had no property right it could pass to them. While the rights of the displaced Arabs must be restored, the situation of the Jews brought into Israel must be considered as well. These people have been in place for a substantial period, many since 1949–50. They too are, in some measure, victims in the situation since, for many, their decision to migrate to Israel was not entirely voluntary. They were caught up in difficult circumstances as a result of the after-effects of the mass killings in Europe during World War II, of the policy of the major powers that did not want to provide them refuge, of the Jewish Agency's efforts to keep the major powers from accepting them, of the Jewish Agency's expulsion of the Palestine Arabs, and the resulting discrimination against Jews in Arab states. In many cases the property of departing Jews was taken by the government. Many who came

from Arab states, as already indicated, were provoked by the government of Israel into immigrating to Israel.

Accommodation must be worked out to give land and other property back to the Arab owners while minimizing the hardship to Israelis. After the passage of so much time, a perfect restoration of the status quo is not possible. Not only must the interests of present occupants be considered, but even if a Palestine Arab is restored to a particular house or farm, that does not compensate for several decades of dispossession. The Arab communities that surrounded an individual's land or business, in most instances, no longer exist. A mechanism should be devised to hear claims of displaced Arabs and to determine their rights to houses and land. An internationally constituted commission, with Arab and Israeli participation, might be an appropriate means. Since restoration of the status quo in many instances is impossible, the appropriate solution might be repatriation at some other location with monetary compensation for the former holdings.

Many displaced Arabs would choose not to return or to take their land, businesses, or houses. To these Arabs Israel owes monetary compensation. In its December 1948 resolution on repatriation of the Palestine Arabs, the General Assembly stated that "compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."[17] The government of Israel provided partial compensation for land and bank accounts. It established a land compensation scheme in the 1953 law by which it gave itself title to confiscated land. It also made, as indicated, partial payment on bank accounts held by Palestine Arabs. Estimates have been made of the amount of monetary loss suffered by the Palestine Arabs as a result of the 1948 expulsion. A UN estimate put the loss, expressed in 1984 U.S. dollars, at $15 billion, while another put it at $92 billion.[18] A process could be instituted to entertain claims by Palestine Arab refugees. A possible model is the United States–Iran Claims Tribunal, established to adjudicate claims by U.S. nationals against the government of Iran.[19] A similar process could be used to adjudicate the claims of Jews who lost property in Arab states.

Israel is also under an obligation to end discrimination against Arabs. This means the repeal of the Law of Return and of those provisions of

the Nationality Law that favor Jews. It also means revision of the land tenure system to make land available to all on a basis of equality, and Zionist national institutions must be stripped of their role in landholding and administration. Also required is a repeal of those laws that reflect a concept of Israel as a Jewish state and those that grant benefits based on IDF service. To end the discrimination against Arabs, Israel must reform itself into a state representing all its inhabitants.

In addition to fixing responsibility on states, international law imposes liability on individuals. Planning or waging a war of aggression is a crime for which an individual is responsible. The Charter of the Nuremberg Tribunal provided such liability,[20] and the Nuremberg Tribunal found such liability in the customary law of nations.[21] The UN General Assembly said that "a war of aggression constitutes a crime against the peace, for which there is responsibility under international law."[22]

Leaders of the Jewish Agency bear this liability for waging a war of aggression and for expelling the Palestine Arabs in 1948. Government leaders of Israel are liable for the wars of 1956, 1967, and 1982.[23] The fact that time has passed since these violations occurred does not preclude prosecution, since there is no limitations period for these crimes. Jurisdiction over them is universal. While there is no international criminal court before which the cases can be brought, all states have a right under customary international law to investigate and to prosecute.

Apartheid too is an offense entailing individual criminal responsibility, and government leaders of a state practicing apartheid are individually liable. The Apartheid Convention empowers the Human Rights Commission to prepare lists of individuals, organizations, institutions, and representatives of states that commit apartheid.[24] So, too, are organizations that carry out apartheid. The International Convention on the Suppression and Punishment of the Crime of Apartheid declares criminal "those organizations, institutions and individuals committing the crime of apartheid."[25] The Jewish Agency, the World Zionist Organization, the Jewish National Fund, and the Histadrut carry out apartheid, so officials of other states should not facilitate the activities of these organizations since the convention prohibits abetting, encouraging, or cooperating in apartheid.[26] Under the Apartheid Convention, states must take positive steps to stop apartheid—namely, "to adopt any legislative or other measure neces-

sary to suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime."[27] As with the crime of aggression, jurisdiction to prosecute for apartheid is universal. The Apartheid Convention requires states to prosecute persons responsible for acts of apartheid,[28] but such acts are not considered political crimes for purposes of extradition.[29]

In the West Bank and Gaza Strip an additional body of international law imposes liability on individuals. The law of belligerent occupation applies there, and it provides criminal liability for certain acts against the occupied population. The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War defines what it calls "grave breaches," which includes willful killing, torture, unlawful deportation, transfer of one's own population, and property destruction or appropriation.[30] States adhering to the Convention must "search for persons alleged to have committed, or to have ordered to be committed, such grave breaches." They must "bring such persons, regardless of their nationality, before its own courts," or hand them over to another state prepared to prosecute.[31] These same acts were recognized by the Nuremberg Charter as crimes for which individuals bear responsibility. The UN Commission on Human Rights found Israel's "grave breaches" of the Geneva Civilians Convention and of the 1977 protocol to be "war crimes and an affront to humanity."[32]

The expulsions carried out during the 1948 war constitute grave breaches; so do the killings of Arab civilians during the 1948 war, their expulsion, and the taking of their real and personal property. Under a 1977 protocol to the 1949 Geneva Conventions, "practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination," carried out in territory under military occupation, are considered a "grave breach."[33] While Israel has not ratified that protocol, such acts are prohibited even apart from it by a military occupant's duty to treat civilians equally, "without any adverse distinction based, in particular, on race, religion or political opinion."[34]

Finally, the acts of certain Israeli officials in connection with the mass killings in the Sabra and Shatilla refugee camps in Beirut in 1982 constitute war crimes entailing individual penal liability.

Those responsible were the high officials who were aware of the consequences of permitting the entry into the camps of the forces that carried out the killings and those who, by virtue of a command position, were responsible for the care of the civilian population in their charge.[35]

29

Their Brother's Keeper: The Role of Other States in Resolving the Conflict

In pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support.—UN General Assembly*

A state violates international law not only when it does so itself, but when it helps another state to do so. "Aid or assistance by a State to another State," stated the UN International Law Commission, is illegal if "rendered for the commission of an internationally wrongful act."[1] Under customary international law, a state that gives aid is responsible for its use.[2] If it is aware that the aid is being used unlawfully, it is responsible for any injury.[3] This rule is particularly well established where the wrong done by the recipient state is serious, such as aggression or a denial of self-determination.[4] "Complicity" may take the form of "provision of weapons or other supplies to assist another State to commit genocide, to support a regime of apartheid, or to maintain colonial domination by force," according to Roberto Ago, the International Law Commission's rapporteur on the topic of state responsibility.[5]

The UN Security Council has asked states to withhold material aid from states that deny self-determination to a portion of their population. In 1966 it called on states "not to render financial or other economic aid to the illegal racist regime in Southern Rhodesia."[6] On South Africa it said that "the acquisition by South Africa of arms and related matériel constitutes a threat to the maintenance of international peace and security."[7]

The Geneva Civilians Convention outlawed complicity in the violation of the rights of an occupied population. In Article 1 "the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."[8] The UN Human Rights Commission declared that, in light of Israel's violations of

the convention, states that give aid to Israel fail to "ensure respect" for the convention. It asked "all states, in particular the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, in accordance with Article 1 of that Convention" to avoid "extending any aid which might be used by Israel in its pursuit of the policies of annexation and colonization."[9] This was a reference to Israel's policy of settling the West Bank and Gaza Strip. The UN Security Council asked states "not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories."[10] The General Assembly asked states "not to recognize any changes carried out by Israel in the occupied territories and to avoid actions, including those in the field of aid, which might be used by Israel in its pursuit of the policies of annexation and colonization."[11] It asked states not to "provide Israel with military, economic and political assistance, thus discouraging Israel from continuing its aggression, occupation and disregard of its obligations under the Charter."[12]

After Israel invaded Lebanon in 1982, the assembly expressed "grave concern over the continued supply of modern arms and war materials to Israel, augmented by substantial economic aid, without which Israel's policy of aggression and of flouting United Nations resolutions could not be maintained." The assembly declared "the international responsibility of any party or parties that supply Israel with arms or economic aid that augment its war potential."[13]

The major state aiding Israel has been the United States,[14] which provided substantial aid, particularly after 1973.[15] The aid came in the form of money and equipment, as well as income tax deductions to persons who contribute to Zionist organizations. U.S. secretary of state Henry Kissinger said Israel was "dependent on the United States as no other country is on a friendly power."[16] It was the magnitude of U.S. aid that led the United Nations to call for an end to aid to Israel. The aid was viewed as facilitating Israel's denial of self-determination to the Palestine Arabs.[17]

The General Assembly particularly criticized the Israel-U.S. agreements on strategic cooperation of November 30, 1981, which, it said, would "encourage Israel to pursue its aggressive and expansionist policies and practices" in the West Bank and Gaza Strip and would have "adverse effects on efforts for the establishment of a comprehensive, just and lasting peace in the Middle East." Consequently,

the agreements would "threaten the security of the region."[18] The nonaligned countries condemned these agreements as "a dangerous threat to international stability and to peace and security in the Middle East."[19]

The impact of U.S. aid to Israel was raised in the U.S. Senate in 1980. Senator Adlai Stevenson proposed reducing the annual appropriation to Israel by the amount Israel spent on civilian settlements in the West Bank and Gaza Strip.[20] The Senate, however, defeated the proposal.[21] The Department of State justified the aid on the ground that it had a private agreement with Israel that the aid would not be used in the West Bank or Gaza Strip.[22] But Senator Stevenson and the U.S. comptroller general pointed out that provision of aid for any purpose made available other funds that could be used to finance settlements.[23]

Arab states gave the Palestine Arabs financial aid to use in military operations against Israel, and that aid raised the question of whether a state is entitled to give assistance to a dependent people seeking self-determination. Israel said that aid to self-determination movements was unlawful; the International Court of Justice never addressed the matter directly but dealt with it obliquely in one case.[24] When Nicaragua sued the United States, the court said that in the context of a civil war outside assistance to insurgents is unlawful, but the court added a proviso that it was "not here concerned" with "decolonization."[25] It thus implied that aid to a dependent people might be lawful.

The UN General Assembly has dealt with the issue directly. Referring to the Palestine Arabs, it recognized the "legitimacy of the struggle of peoples under colonial and alien domination" who are "recognized as being entitled to the right of self-determination" to "restore to themselves that right by any means at their disposal." It said that dependent peoples have the right "to receive all kinds of moral and material assistance."[26]

Some Arab states allowed Palestine Arab guerrillas to operate from their territory. Israel called this aggression by those states. But Michael Reisman writes that the UN Charter's prohibition on aggression is based on "political legitimacy," and therefore each application of it "must enhance opportunities for ongoing self-determination."[27] As seen earlier, the Security Council, in considering Palestine Arab

guerrilla attacks into Israel, did not condemn the states from whose territory the attacks were made.

International Court of Justice Judge Ammoun, who analyzed force by a dependent people as self-defense, said that "self-defense may be collective; thus we see the other peoples of Africa, members of the Organization of African Unity, associated with the Namibians in their fight for freedom."[28] When the South-West Africa Peoples' Organization (SWAPO) conducted military operations to wrest Namibia from South Africa, it received material assistance from many states. Angola provided it with territory for base camps. The United Nations supported SWAPO financially and organized training in government leadership. Neither Angola nor states participating in UN assistance to SWAPO were considered to be violating international law.

Deprivation of self-determination is an international crime, which means it is an offense not only against the injured people but against the world community.[29] Since "forcible maintenance of colonialism is a crime," said Kadar Asmal, other states are entitled to "assist in the removal of such a criminal."[30]

The legality of the use of force to aid a dependent people has been challenged on the ground that it is difficult to determine which situations give rise to a right to self-determination.[31] While that is often a difficulty, in many situations the right to self-determination of a given people is widely recognized.

In its Declaration on Friendly Relations, the General Assembly said that dependent peoples are "entitled to seek and to receive support in accordance with the purposes and principles of the Charter of the United Nations."[32] In its Definition of Aggression the assembly, in saying that anticolonial force is not aggression, referred to "the right" of dependent peoples "to struggle" against the domination and, to that end, "to seek and receive support, in accordance with the principles of the Charter."[33]

Collective force to end settler colonialism has been found by the Security Council to be lawful. It determined that a government that denied self-determination to the population of Rhodesia was a threat to the peace.[34] With South Africa, the council said that apartheid "seriously disturbs international peace and security."[35] A finding of a threat to the peace opens the way for collective sanctions involving force under Charter Article 42. The General Assembly also decided

that apartheid in South Africa had created "a situation in the whole of southern Africa which constitutes a grave threat to international peace and security."[36]

Zionism was called a "threat to world peace and security" by the foreign ministers of the nonaligned states.[37] The General Assembly determined "that the activities of Israel, in particular the denial to the Palestinian people of its right to self-determination and independence, constitute a serious and increasing threat to international peace and security."[38] If Israel's actions constitute a threat to the peace, then other states are entitled to assist the Palestine Arabs to eradicate that threat.

Apart from a right to aid a dependent people, states may aid victims of aggression. Since their territory was taken by aggression, the Palestine Arabs may seek assistance in collective self-defense —under Article 51 of the UN Charter—and states have a right to provide it. States are obliged not to recognize the illegal situation created by Israel's aggressive occupation of Palestine.[39]

Beyond enjoying a right to assist the Palestine Arabs to achieve self-determination, states may be under a duty to do so. The fact that a national-liberation struggle is lawful, wrote Lidia Modzhorian, means that other states have "not only a right but an obligation" to aid that struggle.[40] Self-determination was recognized by the UN Charter as a necessary condition for world peace. The charter calls for respect for self-determination and for "other appropriate measures to strengthen universal peace."[41] The General Assembly has urged states to aid peoples seeking self-determination. In affirming the right to seek self-determination "by all the necessary means," it asked states to provide "moral and material assistance" to national liberation movements.[42] It also called on states to "give all their political, moral and material assistance to peoples struggling for liberation, self-determination and independence against colonial and alien domination." It referred to the Palestine Arabs as one such people.[43]

In a resolution recognizing the "inalienable rights of the Palestinian people in Palestine" and the right of the PLO to use "all means" to achieve those rights, the assembly asked states to assist the PLO.[44] On another occasion it asked states to "extend their support to the Palestinian people through its representative, the Palestine Liberation Organization, in its struggle to restore its right to self-determi-

nation and independence in accordance with the Charter of the United Nations."[45] In the Rhodesia case the Security Council required states to take positive steps to end the racial-minority government there. If a people uses military means to achieve self-determination, other states are obliged to provide material assistance if requested by that people.[46]

States are also required to refuse recognition to a government that denies self-determination.[47] The Security Council called on states, for example, not to recognize the minority government of Rhodesia.[48] Nor may states recognize a government that took its territory by aggression. The American Law Institute, which drafted a statement of the customary international law relating to statehood, said that states should not recognize as a state "an entity that has attained the qualifications for statehood as a result of a threat or use of armed force in violation of the United Nations Charter."[49] The government of Israel denies self-determination to the Palestine Arabs and is the product of aggression against them. The General Assembly has called on states to "sever diplomatic, trade and cultural relations with Israel" and to "cease forthwith, individually and collectively, all dealings with Israel in order totally to isolate it in all fields."[50]

Steps to a Solution:

A New Role for the United Nations

I can be expected to look for truth but not to find it.
—Denis Diderot, *Philosophical Thoughts*

The United Nations was formed to solve problems like the conflict over Palestine. One way in which the United Nations becomes involved in territorial disputes is in deciding which parties to admit to its proceedings. A party that cannot participate at the United Nations is handicapped in pursuing its diplomacy. From 1947 to 1949 the Jewish Agency and the Arab Higher Committee participated in the work of the United Nations, at its request, on the Palestine question.[1] In 1949 the Security Council and General Assembly admitted Israel to membership.[2] After that, the Palestine Arabs had no representation at the United Nations.

When they admitted Israel to membership, the General Assembly and Security Council determined that Israel was a "peace-loving state," as required by Article 4 of the UN Charter. But in the 1980s the assembly decided that Israel's "record, policies and actions" showed it was "not a peace-loving Member State," that it had "persistently violated the principles contained in the Charter," and that it had "carried out neither its obligations under the Charter nor its commitment under General Assembly resolution 273 (III) of 11 May 1949."[3]

In Resolution 273 the assembly had also referred back to its Resolution 194, of December 11, 1948, which called on Israel to repatriate displaced Arabs. Resolution 273 noted the "declarations and explanations made by the representative of the Government of Israel before the ad hoc Political Committee in respect of the implementation" of prior United Nations resolutions, which included Resolution 194. Israel had not, however, permitted repatriation of the Palestine Arabs.

The assembly thus concluded that Israel no longer qualified for membership in the United Nations. Under Article 6 of the charter, a state may be expelled by the General Assembly on recommendation of the Security Council. Were the Security Council to reach a similar conclusion, the assembly could expel Israel from the United Nations.

To participate at the United Nations, a delegation must represent the state it claims to represent. Each UN organ determines the validity of credentials submitted to it. In 1950 the General Assembly said that, in a dispute over credentials, it would consider "the Purposes and Principles of the Charter and the circumstances of each case."[4] Self-determination is one of the "purposes and principles."[5] Self-determination must be respected by UN organs in their interpretation and application of the charter.[6]

On this basis the General Assembly rejected the credentials of the government of South Africa in the 1970s, after concluding that that government represented only one segment of the population of South Africa.[7] Thereafter, South Africa did not participate in the General Assembly. That decision is applicable to other rights-denial situations, whether of a colonial nature or not.[8]

In 1982, after the credentials committee of the assembly recommended the credentials of ninety states—including Israel—Iran moved to exclude Israel from that list.[9] A vote was avoided when the assembly adopted a motion by Finland to take no action on the matter.[10] In 1983 a resolution to reject Israel's credentials was introduced by Iran and Libya, and again the assembly voted to take no action.[11] Similar resolutions were introduced in subsequent years but were defeated.[12] The idea of rejecting Israel's credentials was criticized on the ground that it would leave it unrepresented and therefore unable to participate in the UN work of resolving international conflicts.[13]

The General Assembly rejected South Africa's credentials out of frustration over South Africa's continuing rejection of its calls to end apartheid. Many member states, primarily of the Third World, had reached a similar degree of frustration with Israel. The assembly repeatedly called on Israel to withdraw from the West Bank and Gaza Strip, and to terminate its violations of Arab rights there.

Some credentials controversies at the United Nations involved competing claimants to the seat of a given state. The assembly for many years accepted the credentials of the Taiwan government as

representing China, though it did not control China. The assembly accepted the credentials of the Khmer Rouge government as representing Kampuchea, even after it lost power in 1979. The assembly decided that the government in control in Kampuchea had come to power by aggression.[14] On this principle, the PLO has a plausible case for entitlement to the credentials for the state existing in the territory of former Mandate Palestine.

In 1974 the General Assembly invited the PLO to "participate as an observer in the sessions and the work of all international conferences convened under the auspices of the General Assembly in the capacity of observer."[15] The assembly said that the Palestinian people were "a principal party in the establishment of a just and lasting peace in the Middle East."[16] After that time the PLO actively participated in UN activities.

As it did with the dependent people of Namibia, the United Nations established special agencies to promote self-determination for the Palestine Arabs. In 1968 the General Assembly established the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, which reported on the Gaza Strip and West Bank.[17] In 1975 it established the Committee on the Exercise of the Inalienable Rights of the Palestinian People, to seek a political solution.[18] In 1977 it created in the UN secretariat an office to assist the latter committee—the Special Unit on Palestinian Rights.[19] That unit was upgraded in 1979 to the status of a division of the secretariat.[20] While this UN activity did not immediately achieve self-determination for the Palestine Arabs, it made their self-determination a visible issue in world diplomacy.

To service its activities at the United Nations, the PLO established a mission in New York. In 1988 the U.S. Congress adopted legislation calling for the expulsion of that mission but the General Assembly objected.[21] The United States dropped the matter after a U.S. court ruled that to exclude the mission would violate U.S. obligations to the United Nations.[22] That same year the United States decided not to issue a visa to PLO chairman Yassir Arafat, after the General Assembly invited him to address it. The assembly condemned the U.S. action and held its session in Geneva so that Arafat might participate.[23]

Beginning in 1975, the Security Council routinely allowed the

PLO to take part in sessions affecting Palestinian interests. Under Rule 37 of its Provisional Rules of Procedure, the council may allow a member state to participate, and under Rule 39 it may invite any person to participate. The council did not admit the PLO observer under either rule. It required that the request for PLO participation be made in each instance by a member state.[24] It gave the PLO the same rights of participation as would be enjoyed by a member state admitted under Rule 37, which meant that it had the right to speak during debate.[25]

The International Court of Justice has not been asked to rule on the basic legal issues in the conflict over Palestine. Arab states proposed in 1947, it will be recalled, that the General Assembly seek an advisory opinion, but the assembly declined. Under Article 96 of the UN Charter, both the assembly and the Security Council have the power to seek an advisory opinion and in disputes over self-determination in South-West Africa and Western Sahara the assembly sought and received advisory opinions, which it used in planning further action.[26] On the Palestine-Israel question critical legal issues are in dispute, most importantly the competing claims to the territory.

As it did in the Western Sahara case, the court might be able to resolve long-disputed factual issues. One obstacle to negotiations between the Palestinians and Israelis is that the two parties have conflicting views on the major events in the history of their relationship—like the circumstances of the Palestinians' departure in 1948—and responsibility for the major wars. Fact-finding on these matters by the court could contribute to an understanding of the events in the world community, and an agreed understanding of the facts would provide a basis from which to negotiate a settlement.

In 1965 the European settlers in Rhodesia declared independence from Britain and established a government from which they excluded the indigenous majority population. The General Assembly declared that "the perpetuation of such minority rule would be incompatible with the principle of equal rights and self-determination of peoples."[27] The Security Council called on states not to recognize the settler government,[28] and it determined under Article 39 that the settler regime was a threat to the peace, on the ground that the violation of self-determination might lead to violence in the region.[29] There-

fore, it called for a diplomatic and economic boycott of Rhodesia.[30] The position of the Jewish Agency declaring statehood in Palestine at the close of the mandate was similar to that of the white settler group in Rhodesia when it issued its declaration of independence, since each was asserting a claim against the population with a right to the territory.[31] But the United Nations did not react to the Jewish Agency's declaration in the way it later did to the Rhodesian settlers' declaration. Although Egypt told the Security Council that the result of the Jewish Agency's declaration of independence would be "minority domination in Palestine,"[32] the council did not stop the agency.

Later, the United Nations, enlarged by recently independent states, came to view the Palestine Arabs' claim of self-determination more seriously.[33] Former U.S. ambassador to the United Nations Jeane Kirkpatrick expressed concern that a declaration of Israel's illegality might follow the General Assembly's 1975 resolution equating Zionism with racism. "It is a short step," she said, "from the proposition that Zionism is racism to the proposition that the State of Israel is based on aggression." She continued: "Adoption of this resolution was tantamount to declaring Israel an illegitimate state based on an illegitimate philosophy." Zionism "is the national movement on which Israel is based. When the UN majority declared Zionism is racism, it declared immoral the foundations of Israel."[34] The nonaligned countries called for "a boycott of Israel in the diplomatic, economic, military and cultural fields and in the sphere of maritime and air transport."[35]

The Security Council declared in another context that "*apartheid* is a crime against the conscience and dignity of mankind and seriously disturbs international peace and security."[36] The council used this rationale to impose economic sanctions against Southern Rhodesia.[37] It used it as well to embargo the shipment of arms to South Africa.[38] South Africa argued that its apartheid policies were an internal matter, but the council said that it was a matter of international concern, particularly since it threatened the peace.[39] Israel's apartheid policy threatens the peace and could usefully be addressed by the council.

The United Nations was criticized for bias against Israel for the posture it adopted in the mid-1970s. "Only Israel, and not the Arabs," wrote Tom Franck, "was being required to make concessions."[40] Franck criticized the studies prepared by the Division of Palestinian

Rights as "highly partisan."[41] Viewed, however, in light of the UN early support for Israel and its opposition to the self-determination of the Palestine Arabs, its later posture appears less partisan. The UN changed its approach only after states that had themselves been subjected to foreign rule were admitted to the organization.

The Security Council has never addressed the Palestine issue from the standpoint of legal entitlement. Only the council, under the UN system, has the power to make a determination of a threat to the peace that is binding on member states.[42] The nonaligned countries have asked the Security Council to invoke Chapter 7 to force Israel to evacuate the West Bank and Gaza Strip.[43] The Security Council should invoke Chapter 7 to find that a threat to the peace exists in Palestine, and then it could mobilize sanctions against Israel for failing to permit the Palestine Arabs to exercise their right of self-determination.

If the Security Council were to fail to make this finding because of a veto cast by one of its permanent members, the General Assembly could act through its Uniting for Peace Resolution, which allows it to organize voluntary sanctions when the Security Council fails to adopt mandatory sanctions because of a veto by a permanent member.[44] The assembly would ask states to observe sanctions against Israel on a voluntary basis.[45]

Statehood in the Making: Palestine's Declaration of Independence

The Palestine National Council, in the name of God, and in the name of the Palestinian Arab people, hereby proclaims the establishment of the State of Palestine. . . .—Declaration of Independence, 1988

After Israel was established, the Palestine Arab position was that the Zionist settlers must depart. "How can one peacefully coexist," Philip Mishalani, an Arab analyst, asked, "with people occupying one's own town and plowing one's own field?"[1] The Palestine Arabs considered Jews of long residence in Palestine to be Palestinians, but not Jews who came to establish a Jewish state. A Palestine National Council, representing the major Palestine Arab organizations, met in 1964 and adopted a Palestine National Covenant, which said: "Jews who were living permanently in Palestine until the beginning of the Zionist invasion will be considered Palestinians."[2] This meant "repatriation" of Zionist settlers. The Palestine Arabs generally took the year of the Balfour Declaration (1917) as the point separating Jews considered Zionist colonialists from those they considered Palestinians.[3]

Later this position had changed. By the early 1970s Fatah called instead for a "democratic secular state" in a Palestine to be inhabited by all then residing there, plus those Arab refugees who would choose to return.[4] It did not view the Zionist settlers as entitled to remain but offered the proposal as a compromise solution.[5] This position represented a major concession: "We are willing," said Naim Khader, "to grant an equal right to those who have no right and we are willing to live on the basis of equality with those who made us exiled and dispersed us."[6] It was proposed to amend the Palestine National Covenant to conform to this view, but the amendment failed because of differences over the nature of the "democratic secular state."[7]

The Palestine National Council made a further concession in 1974 in a statement that it would endeavor to "liberate Palestinian soil and to set up on any part of it which is liberated by the militant national authority of the people."[8] In 1977 the council clarified that this "national authority" was to be a state.[9] This position did not disavow a democratic secular state as an ultimate aim but relegated it to a future time, following a period of coexistence between a Palestine state and Israel.[10] The PLO continued to reject Security Council Resolution 242 on the ground that it did not address the national rights of the Palestine Arabs.[11] Israel continued to claim the territory within the 1949 armistice lines. It refused to withdraw from the West Bank and Gaza Strip or to repatriate any Palestine Arab refugees.

The concessions of the Palestine Arabs reflected the weakness of international legal institutions in achieving a territorial resolution for them in keeping with legal norms. The concessions did, however, open a path for a negotiated solution. Seeking an opening to begin negotiations for a settlement, the PLO made private approaches to Israel, but Israel did not pursue them.[12] That refusal encouraged the Palestine Arabs to continue a policy of force of arms.[13]

In Israel, however, some elements outside of government responded to the PLO's concessions and began a private dialogue with it. Particularly after Israel's 1982 invasion of Lebanon, many Israelis began publicly to oppose Israel's occupation of the West Bank and Gaza Strip. Some Israeli soldiers refused to serve there, and Israelis participated together with Palestinians in anti-occupation political demonstrations.

In 1983 the General Assembly called for an international conference to promote negotiations for a settlement between Israel and the Palestinians along the lines of a two-state approach. Most member states supported the idea. The assembly envisaged a conference based on the premise that the Palestinian people have a right to return, a right to self-determination, and a right to establish a state in Palestine; that the PLO should represent the Palestinian people in negotiations and that Israel should end its occupation of the territories it took in 1967, including east Jerusalem.[14] When the cold war diminished in intensity in the late 1980s, the prospects were enhanced that such an international conference might produce results.

Under the influence of the Palestinian uprising, the Palestine National Council in 1988 moved farther in the direction of a two-state

approach by declaring independence for a Palestine state.[15] The council called for a state with Jerusalem as its capital. While it did not specify borders, it did issue a statement that negotiations for establishment of the state should be based on Security Council Resolution 242, a reference that indicated that the council contemplated a state in the Gaza Strip and West Bank, since Resolution 242 asked Israel to withdraw from those territories.

While Israel refused to consider the possibility of a Palestine state, over one hundred states soon gave it diplomatic recognition. The United States, without recognizing the Palestine state, for the first time undertook discussions with the Palestine Liberation Organization.[16] The PLO indicated more clearly than previously its recognition of Israel as a state and renounced violence against civilians.[17] Members of Israel's Knesset held public meetings with Palestine National Council officials.[18] A poll of Israelis indicated that 53 percent favored negotiations with the PLO. Following Jordan's renunciation of rights in Palestine in 1988, the PLO began to pay the salaries of some civil servants. Local committees operating under PLO auspices began to provide a variety of social services to the population. The Palestine state thus began to fulfill, to an extent, the criterion of control over territory that is required before an entity is deemed a state.[20]

The General Assembly responded to the Declaration of Independence in two ways. It gave the new state the right to submit communications directly to the secretary-general for official publication, rather than through a member state, as had been previously done.[21] And it decided that the designation "Palestine" should be used in place of "Palestine Liberation Organization" to refer to the Palestinian entity enjoying observer status.[22]

In 1989 the Security Council, too, began to recognize the observer as being from the Palestine state rather than from the PLO. On the basis of the assembly's decision that the PLO might communicate directly rather than through a member state, the council allowed Palestine itself to request to participate in a particular council debate, abandoning its previous requirement that a member state make the request on its behalf.[23] Using as precedent the fact that the UN Council for Namibia, without controlling territory, had been admitted to the International Labor Organization and the Food and Agriculture Organization,[24] Palestine began proceedings to request membership in several international organizations connected to the United

Nations, but the United States threatened to withhold funding from any organization that admitted Palestine.

The statehood declaration also opened the possibility that Palestine might be able to sue Israel in the International Court of Justice for resolution of basic legal issues in their conflict. In addition to advisory opinions sought by the United Nations, the court hears disputes filed by one state against another. Difficulties stand in the way of this approach, however. States are subject to the court's jurisdiction only if they submit to it, and Israel has not done so.[26] Thus, Israel would have to agree to submit the particular case. Another obstacle was that only states may sue before the court.[27] But given the strength of Palestine's claim to statehood, and given its partial exercise of control over the West Bank and Gaza Strip, the court might well decide that Palestine is a state.[28]

The Declaration of Independence cited two sources of legitimacy for the claimed state. It referred first to the Palestinian people's "inalienable rights in the land of its patrimony." It also referred to General Assembly Resolution 181 as providing "the conditions for international legitimacy that guarantees the right of the Palestinian Arab people to sovereignty on their homeland."

The reference to Resolution 181, relied upon as well by the Jewish Agency when it declared statehood in 1948, amounted to a recognition of a right for a Jewish state in Palestine. A political declaration issued by the council along with the Declaration of Independence referred to Israel, however, as "a fascist, racist, colonialist state based on the usurpation of the Palestinian land and on the annihilation of the Palestinian people." A colonialist state would not enjoy international legitimacy, and, therefore, there was tension between the Declaration of Independence and the political declaration.

It was argued that Resolution 181 could provide a legal base for two states in Palestine, even after four decades of nonimplementation. Sally and Thomas Mallison said that subsequent General Assembly resolutions referred to Resolution 181 and were consistent with both Palestinian rights in Palestine and the existence of the Israeli state.[29] But Resolution 181, as explained in Part One, was a recommendation not based on an assessment of legal entitlement. While the General Assembly referred to Resolution 181 in subsequent resolutions, it did so only to confine Israel to the territory suggested in Resolu-

tion 181 for a Jewish state. In referring to the "inalienable rights" of the Palestinian people, however, the declaration is on solid legal footing. Here the declaration relied on the longtime occupation of Palestine by its Arab population and on its right of self-determination.

While that entitlement applies to all of the territory of historic Palestine, a solution in the suggested direction of two states is practical. PLO chairman Arafat, who shortly was chosen as the president of the Palestine state, called it a solution based on "possible" justice, as opposed to the Palestine Arabs' full legal entitlement. Israel's major stated objection to a Palestine state was concern over its security, but it was not clear that a Palestine state would threaten Israel more than the status quo.[30] To ensure that such a state would not threaten Israel, there were suggestions that it be demilitarized, or under the aegis of a joint Israel-Palestine authority, with Israel's settlements continuing to exist. In the distant future, it was thought, a federation arrangement might develop between the Israel and Palestine states, or a binational state, or even a single state.

The shortcoming of the two-state approach was that it provided no immediate solution for the Palestine Arabs displaced from Palestine in 1948. The Declaration of Independence stated that Palestine is "the state of Palestinians wherever they may be. The state is for them to enjoy in it their collective national and cultural identity." This evidently meant that Palestinians not native to the West Bank and Gaza Strip would enjoy the right to settle there. But it was not anticipated that there would be substantial migration to a West Bank–Gaza state by Palestine Arabs living inside the 1949 armistice lines, or elsewhere in the world. The primary attachment of people in both groups was still to their places of origin inside the 1949 armistice lines.

Thus, the right of all Palestine Arabs to return to their places of origin remains an unresolved issue. One possibility is that this issue would be negotiated between Israel and the new Palestine state. Given Israel's long-standing refusal to repatriate the Palestine Arabs, the issue does not promise to be resolved readily. But until the 1948 refugees are offered the right to return or to be compensated, the upheaval generated by the 1948 war in Palestine will remain. It is in the interest of the Palestine Arabs, of Israel, of the Arab states where many of the refugees reside, and of the world community to find a solution.

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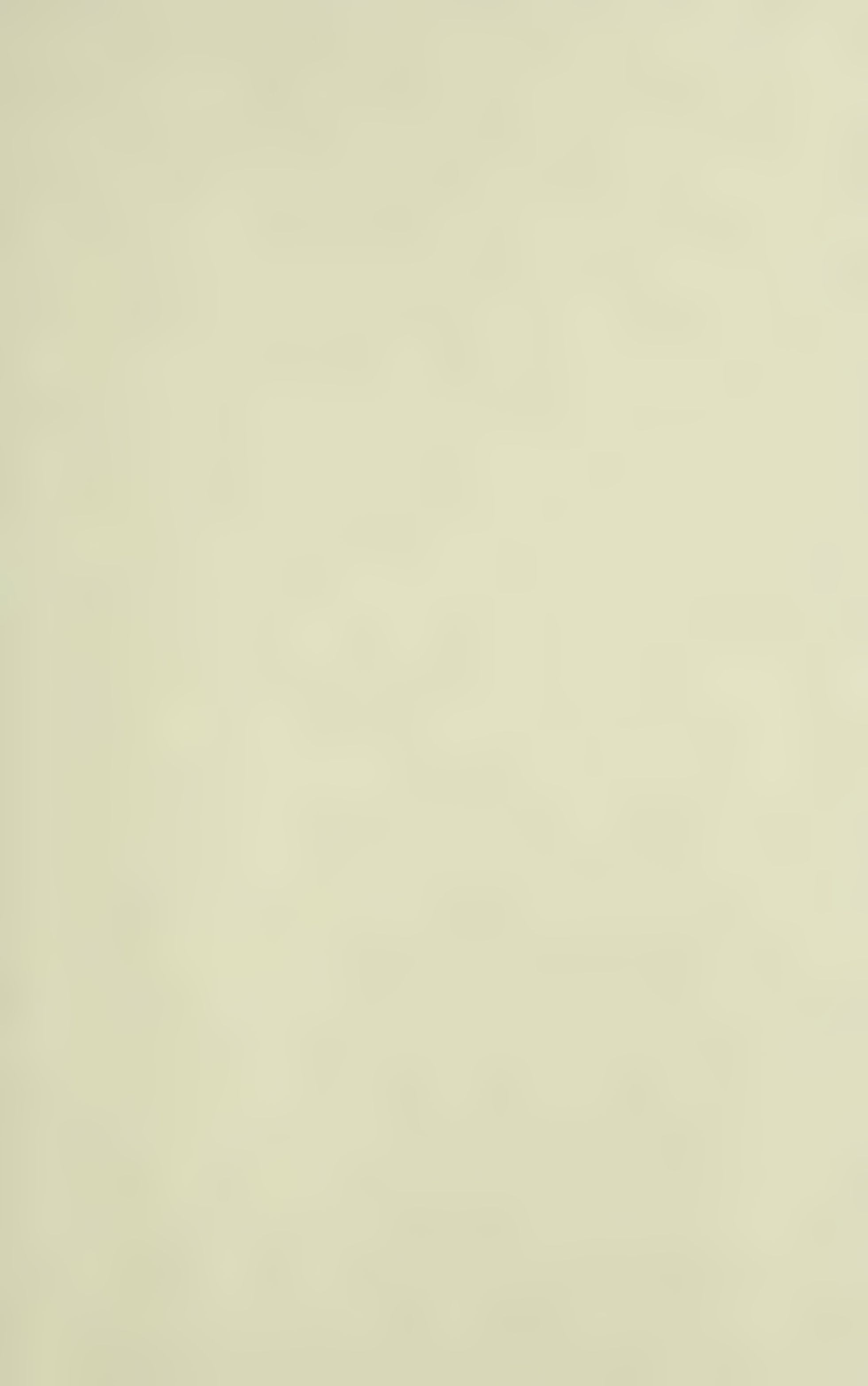
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About the Author. John Quigley is Professor, College of Law, and Adjunct Professor, Department of Political Science, The Ohio State University. He is the coauthor of *Treatment of Palestinians in Israeli Occupied West Bank and Gaza*, as well as several books on Soviet law.

Library of Congress Cataloging-in-Publication Data
Quigley, John.
Palestine and Israel : a challenge to justice / John Quigley.
Includes bibliographical references.
ISBN 0-8223-1011-2.—ISBN 0-8223-1023-6 (pbk.)
1. Jewish-Arab relations—1949- 2. Israel—History. 3. Palestinian Arabs—Israel. 4. West Bank.
5. Gaza Strip.
I. Title.
DS119.7.Q722 1990
956.9405—dc20 89-39218 CIP










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